

Village of Wellington

REGULAR MEETING OF THE WELLINGTON VILLAGE COUNCIL

**Darell Bowen, Mayor
Dr. Carmine A. Priore, Vice Mayor
Lizbeth Benacquisto, Councilwoman
Matt Willhite, Councilman
Howard K. Coates, Jr., Councilman**

**Wellington Community Center
12165 West Forest Hill Boulevard
Wellington, Florida**

**TUESDAY, FEBRUARY 24, 2009
7:00 PM
FINAL AGENDA**

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. INVOCATION - Pastor Larry Mayer, LifeChurch.tv, Wellington**
- 4. APPROVAL OF AGENDA**
- 5. CONSENT AGENDA**

A. MINUTES OF THE JANUARY 13, 2009 REGULAR VILLAGE COUNCIL MEETING

Staff requests Council's review and approval of the Minutes of January 13, 2009 Regular Village Council Meeting.

B. RESOLUTION R2009-18 (BLACK DIAMOND HOMEOWNERS' ASSOCIATION, INC. TRAFFIC CONTROL AGREEMENT)

Approval of Resolution 2009-18 approving standard traffic control agreement for Black Diamond Homeowners' Association, Inc.

C. RESOLUTION 2009-19 (WELLINGTON MALL LEASE)

Approve execution of the attached lease at the Wellington Mall located at 12794 Forest Hill Boulevard, Wellington, FL 33414.

D. RESOLUTION R2009-20 (AWARD OF BEAUTIFUL WELLINGTON GRANTS TIER II - PROJECTS TOTAL COST \$57,240)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA APPROVING BEAUTIFUL WELLINGTON GRANTS - TIER II FOR GRAND ISLES AND THE ISLES AT WELLINGTON; AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO GRANT AGREEMENTS TO EFFECTUATE THE GRANTS; AND PROVIDING AN EFFECTIVE DATE.

Village Council acceptance of Resolution R2009-20 Award of Beautiful Wellington Grants Tier II.

E. RESOLUTION 2009-21 (RIGHT OF WAY CONSENT AGREEMENT BETWEEN FLORIDA POWER AND LIGHT AND THE VILLAGE OF WELLINGTON FOR BIG BLUE TRACE LANDSCAPING)

Staff requests approval of a Right-of-Way Consent Agreement between Florida Power and Light and the Village of Wellington.

6. PRESENTATIONS AND PROCLAMATIONS

A. A PROCLAMATION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA RECOGNIZING ROBERT S. MARGOLIS FOR HIS DEDICATED SERVICE TO THE RESIDENTS OF THE VILLAGE OF WELLINGTON

Council's approval of the Proclamation Recognizing Robert S. Margolis for his dedicated service to the Village of Wellington.

B. PROJECT LIFESAVER OF PALM BEACH COUNTY PRESENTATION

Michele Damone of the Indian Trail Improvement District along with representatives from the Palm Beach County Sheriff's Office will be in attendance to make a presentation to Council regarding Project Lifesaver of Palm Beach County.

7. PUBLIC HEARINGS

A. ORDINANCE 2009-06 LANDSCAPE IRRIGATION

Approval and adoption following Second of Reading of Ordinance 2009-06.

8. REGULAR AGENDA

A. RESOLUTION AC2009-02 (FAR NIENTE STABLES IV, LLC)

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE ACME IMPROVEMENT DISTRICT APPROVING THE CONVEYANCE OF RIGHT OF WAY PROPERTY HAVING BEEN A PORTION OF AN ABANDONED SECTION OF LAKE WORTH ROAD TO FAR NIENTE STABLES VI, LLC BY QUIT CLAIM DEED; AND PROVIDING AN EFFECTIVE DATE.

Approve Resolution AC2009-02 authorizing ACME Improvement District to convey Lake Worth Right of Way property to Far Niente Stable VI, LLC.

B. APPROVAL OF ADDENDUM TO AGREEMENT BETWEEN THE VILLAGE OF WELLINGTON, PROFESSIONAL CENTER AT WELLINGTON, LLC. AND RIEKER AND ASSOCIATES INC. PERTAINING TO THE INSTALLATION OF REQUIRED PAVING AND DRAINAGE IMPROVEMENTS FOR SOUTH SHORE BOULEVARD FROM GREENVIEW SHORES TO PIERSON ROAD

Approve addendum to the contract for South Shore Phase I to allow the Village to make direct payments to contractors, H & J Construction, Inc.

9. ATTORNEY'S REPORT

10. MANAGER'S REPORT & UPDATES

11. COUNCIL REPORTS

12. CLOSING COMMENTS

13. PUBLIC FORUM

14. ADJOURNMENT

NOTICE

If a person decides to appeal any decision made by the Village Council with respect to any matter considered at this meeting, you will need a record of the proceedings, and you may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (The above notice is required by State Law. Anyone desiring a verbatim transcript shall have the responsibility, at his own cost, to arrange for the transcript).

Pursuant to the provision of the Americans With Disabilities Act: any person requiring special accommodations to participate in these meetings, because of a disability or physical impairment, should contact the Village Manager's Office (561) 791-4000 at least five calendar days prior to the Hearing.

5. A

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: Minutes of the January 13, 2009 Regular Village Council Meeting

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: Staff requests Council's review and approval of the Minutes of January 13, 2009 Regular Village Council Meeting.

EXPLANATION: Attached, for Council's review and approval, are the Minutes of the January 13, 2009 Regular Village Council Meeting.

FISCAL IMPACT: N/A.

RECOMMENDATION: Staff recommends a Motion by Council approving the Minutes of the January 13, 2009 Regular Village Council Meeting.

MINUTES

**REGULAR MEETING OF THE
WELLINGTON VILLAGE COUNCIL
Wellington Community Center
12165 West Forest Hill Boulevard
Wellington, Florida 33414**

**Tuesday, January 13, 2009
7:00 p.m.**

Pursuant to the foregoing notice, a Regular Meeting of the Village Council was held on Tuesday, January 13, 2009 commencing at 7:00 p.m. at the Wellington Community Center, 12165 W. Forest Hill Boulevard, Wellington, FL 33414.

Council Members present were: Darell Bowen, Mayor, Dr. Carmine A. Priore, Vice Mayor, Lizbeth Benacquisto, Councilwoman, and Matt Willhite, Councilman.

Advisors to the Council were: Paul Schofield, Village Manager, Jeffrey S. Kurtz, Village Attorney, and Awilda Rodriguez, Village Clerk.

- 1. CALL TO ORDER** - Mayor Bowen called the meeting to order at 7:00 p.m.
- 2. PLEDGE OF ALLEGIANCE** – Mayor Bowen led the Pledge of Allegiance.
- 3. INVOCATION** – Rev. Cathy Exley, Trinity Church International West, Wellington delivered the Invocation.
- 4. APPROVAL OF AGENDA**

Mr. Schofield presented the Agenda for approval noting one modification: correct a Scrivener's error in item 5D (Award Bid #004-09/RJB For Purchase and Delivery of Concrete) in the recommendation section deleting the language that says: "and approve all future renewals without further Council approvals."

A motion was made by Councilwoman Benacquisto, seconded by Councilman Willhite, and unanimously passed (4-0) approving the Agenda as presented with one modification: in the recommendation section of item 5D (Award Bid #004-09/RJB For Purchase and Delivery of Concrete) in the recommendation section deleting the language that states: "and approve all future renewals without further Council approvals."

- 5. CONSENT AGENDA**
 - A. MINUTES OF THE NOVEMBER 25, 2008 AND DECEMBER 9, 2008 REGULAR VILLAGE COUNCIL MEETINGS**
 - B. PROPOSAL TO PROVIDE OFFICE SPACE FOR CONGRESSMAN ELECT ROONEY**
 - C. RESOLUTION R2009-04 (APPROVAL OF GRANT AMENDED AGREEMENT BETWEEN VILLAGE OF WELLINGTON AND PALM BEACH COUNTY FOR SIGNAL INSTALLATION AT FOREST HILL BOULEVARD AND QUERCUS LANE) A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON,**

- FLORIDA APPROVING AND AUTHORIZING THE MAYOR, VILLAGE ATTORNEY AND VILLAGE CLERK TO EXECUTE A GRANT AGREEMENT BETWEEN VILLAGE OF WELLINGTON AND PALM BEACH COUNTY TO PROVIDE FUNDING FOR THE COST OF THE INSTALLATION OF A TRAFFIC SIGNAL AT THE INTERSECTION OF FOREST HILL BOULEVARD AND QUERCUS LANE IN AN AMOUNT NOT TO EXCEED ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00)
- D. AWARD BID #004-09/RJB FOR PURCHASE AND DELIVERY OF CONCRETE
 - E. AWARD SEALED BID #003-09/JWV TO MURRAY LOGAN CONSTRUCTION FOR CONSTRUCTION OF SECTION 24 PUMP STATION #9 AND DISCHARGE CONTROL STRUCTURE
 - F. RESOLUTION R2009-05 (AWARD OF REQUEST FOR PROPOSAL #032-08/JWV TO PUBLIC RESOURCES MANAGEMENT, INC. FOR UTILITY RATE STUDY) A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA APPROVING THE SELECTION OF PUBIC RESOURCES MANAGEMENT GROUP, INC. AS THE SUCCESSFUL RESPONDENT TO RFP 032-08/JWV FOR A UTILITY RATE STUDY AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE AN AGREEMENT WITH PUBLIC RESOURCES MANAGEMENT GROUP, INC. TO PREPARE A WATER, WASTEWATER AND REUSE WATER RATE STUDY; PROVIDING AN EFFECTIVE DATE.
 - G. RESOLUTION R2009-01 (LICENSE AGREEMENT WITH WINTER EQUESTRIAN FESTIVAL 2008-2009) AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA APPROVING AND AUTHORIZING THE MAYOR, TO EXECUTE A LICENSE AGREEMENT WITH EQUESTRIAN SPORTS PRODUCTIONS, LLC, FOR TEMPORARY USE OF VILLAGE PROPERTY FOR A PERIOD NOT TO EXCEED SIX MONTHS FOR THE PARKING OF CERTAIN VEHICLES AND TRAILERS ASSOCIATED WITH THE WINTER EQUESTRIAN FESTIVAL; AND PROVIDING AN EFFECTIVE DATE.
 - H. RESOLUTION 2009-003 (PALM TRAN PARK AND RIDE LOT INTERLOCAL AGREEMENT) A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA MODIFYING THE APPROVALS GRANTED BY RESOLUTION 2008-125 AND AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AND ENTER INTO ON BEHALF OF THE VILLAGE OF WELLINGTON AN INTERLOCAL AGREEMENT WITH PALM BEACH COUNTY PROVIDING FOR FUNDING, DESIGN, CONSTRUCTION AND USAGE OF A PARK AND RIDE LOT ON THE TWO ACRE VILLAGE OWNED CIVIC TRACT LOCATED AT THE WELLINGTON GREEN MALL FOR THE PURPOSE OF ENHANCING AND INCREASING PALM TRAN RIDERSHIP; WITH THE MODIFICATIONS BEING THAT DESIGN AND CONSTRUCTION OF THE PARK AND RIDE LOT WILL BE DONE BY PALM BEACH COUNTY RATHER THAN THE VILLAGE; PROVIDING AND EFFECTIVE DATE.

Mr. Schofield presented the Consent Agenda recommending approval as presented.

A motion was made by Councilwoman Benacquisto, seconded by Councilman Willhite and unanimously passed (4-0) approving the Consent Agenda as presented.

6. PRESENTATIONS AND PROCLAMATIONS – NONE

7. PUBLIC HEARINGS

A. ORDINANCE NO. 2009-02: AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA CHAPTER 62 TRAFFIC AND VEHICLES BY ENACTING ARTICLE IV "DANGEROUS INTERSECTION SAFETY ACT"; PROVIDING FOR RECORDED IMAGE MONITORING, DEFINITIONS, AN INTRODUCTORY PERIOD, REVIEW OF RECORDED IMAGES, NOTICES, HEARING, ENFORCEMENT AND PENALTIES RELATED TO A VIOLATION OF THIS ARTICLE, ALSO KNOWN AS A "RED LIGHT ZONE INFRACOCTIONS"; PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

The Ordinance title was read by Mr. Schofield. He noted that Mr. Kurtz would be presenting this ordinance.

Mr. Kurtz explained that this is an ordinance that will allow the Village to use cameras to enforce red light violations. He said that these violations will not go on someone's driving records, but instead will be a civil fine imposed by the Village with the staff monitoring it. Mr. Kurtz said that the Village will most likely engage a company to install the equipment that takes the pictures, and a Village staff member will then review the pictures to confirm whether or not a violation has occurred, will ensure that all of the necessary information to notify the owner of the vehicle is sent out, and then those people will receive that information and will be subject to a fine. He said that those people can either decide to pay the fine or to make an appeal to one of the Village's Special Magistrates. Mr. Kurtz noted that if the fine is not paid or an appeal is not made, the person will waive their right to appeal and it will become a fine upon them. He further explained that the enforcement mechanism is that they will have a Special Magistrate determine whether they are guilty or not and impose a fine, and then the Village is able to collect those monies by any legal means. Mr. Kurtz said that this ordinance is not intended to be a revenue-producing mechanism for the Village, but rather it should be revenue neutral. He said that the intent is that the Village will be decreasing the number of people running through red lights.

Public Hearing

A motion was made by Vice Mayor Priore, seconded by Councilwoman Benacquisto, and unanimously passed (4-0) to open the Public Hearing.

There being no public comments, a motion was made by Vice Mayor Priore, seconded by Councilwoman Benacquisto, and unanimously passed (4-0) to close the Public Hearing.

Councilwoman Benacquisto said that they had discussed at the Agenda Review meeting the process that will be utilized for people who do not pay their fines even after going before the Special Magistrate. She asked Mr. Kurtz to explain what the Village's options would be with regard to those people who did not pay their fines. In response, Mr. Kurtz said that one distinct penalty that is carved out in the ordinance is a provision that states that those people would not be able to get licenses or permits in the Village until the fines had been paid. He said that other than that, the remedy is by any legal means where the Village would probably engage in a collection process and the Council or the staff would make a determination as to how to most efficiently engage in that. Mr. Kurtz said that the Village might engage a company to try to collect those debts or they may sell the lien which has been done by other municipalities. He said that ultimately the Village can try to convert them into judgments by going to court. Mr. Kurtz added that there may come a point in time where it is not cost productive to do that, however, any ordinance that the Village chooses to enforce when you look at the worst case or the ultimate enforcement authority that the Village has, they may lose money on those cases that go to that level. He explained that the reason to go to that level is to show other

people that the Village is willing to do that so that they will adhere to the Village's ordinances in a more reasonable manner. Mr. Kurtz said that the likelihood is that when someone knows that there is a picture of their car going through a red light, they will pay the infraction. He said that is the way that most parking tickets and driving violations tickets are handled. Mr. Kurtz said that if everything went to court, the Village would lose money on it, but that is true of every enforcement system.

Councilwoman Benacquisto said that one of the reasons why the Village is enacting this ordinance is to improve the safety of the intersections. She asked if the Village would graph which intersections are the most dangerous and have had the most accidents and then move on from there prioritizing which intersections are in most need or will they be done all at one time. Vice Mayor Priore added that they had discussed that at the Agenda Review meetings and decided that there were a number of intersections which were primary. He said that they could go through and itemize those intersections that Council each feel are the ones that need these cameras which he said he would ask Mr. Schofield to do. Councilwoman Benacquisto didn't feel that those intersections needed to be delineated that evening, but as they go out for bids to companies who will install the equipment, she wanted to have them design where they would like the cameras to be set up, but for the Council to have the ultimate say in that decision.

Mayor Bowen said that it was his understanding that the companies do a study to determine which intersections need the cameras. Vice Mayor Priore added that the companies do traffic counts.

Councilwoman Benacquisto asked if every company that bid on the project would do a separate traffic count. Mayor Bowen said that the Village would want them to do that. Councilwoman Benacquisto said that she wanted to ensure that the Village's staff had some input into that process.

Mr. Kurtz explained that once the systems are operational, there is the ability to remove or add cameras at various locations. He said that when the Village begins monitor, they will get a good idea where there are a lot of violations and there are a few. Mr. Kurtz said that the good thing is that as these cameras are out there and people become aware of them, they will stop going through the red lights and therefore there is a continual decrease in the need for them at particular locations.

Councilman Willhite asked if it was the Village's intention to do a pilot program or were they moving forward in doing all of the intersections in the Village or just the busiest ones. In response, Mr. Schofield said that as part of the RFQ that is put out, the selected company would have to do a pilot program to see if it works and then from the traffic counts and the pilot data, the Village can then decide whether to engage into a full blown program. He said that there are some intersections where the Village already knows they would like to see monitors installed: Wellington Trace intersections at Forest Hill, Forest Hill and South Shore, Wellington Trace and Big Blue, but beyond that, the RFQ would require the company to do a pilot program to see if the cameras are in fact needed or warranted beyond those locations.

Councilman Willhite asked Mr. Kurtz what would happen in the case of rental cars running through red lights. In response, Mr. Kurtz explained that the rental car company, as the owner of the car, would be notified. He thought that most of the rental agreements give the rental car company the ability to collect any violations that may be associated with the car that is rented. Councilman Willhite asked if the onus is on the rental car companies to track down the person and get the reimbursement, or will the rental car company pay the fine up front. Mr. Kurtz said that the Village would look to the rental car company who may identify who had the car at that point in time. He noted that included in the ordinance is the ability for someone to say that they weren't driving their car at that time, and they can submit an affidavit and request that the case be dismissed. Mr. Kurtz said that as a part of that they can identify who they knew had the car, and then the Village can try to assess that person.

A motion was made by Vice Mayor Priore, seconded by Councilwoman Benacquisto, and unanimously passed (4-0) approving Ordinance No. 2009-02 on First Reading as presented.

B. RESOLUTION R2008-110 (PALOMINO DEVELOPMENT ORDER AMENDMENT) A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, APPROVING THE DEVELOPMENT ORDER AMENDMENT FOR PETITION NUMBER 2003-024 DOA 1, ALSO KNOWN AS PALOMINO EXECUTIVE PARK; FOR THE 12.15 ACRE PROPERTY LOCATED ON THE WEST SIDE OF STATE ROAD 7, APPROXIMATELY 4,000 FEET NORTH OF LAKE WORTH ROAD, AS DESCRIBED MORE PARTICULARLY HEREIN, TO MODIFY THE PREVIOUSLY APPROVED MASTER PLAN TO REMOVE THE 50% (55, 000 SQUARE FEET) LIMITATION OF MEDICAL OFFICE AND ALLOW ALL 110,000 SQUARE FEET AS PROFESSIONAL MEDICAL OFFICE WITHIN THREE BUILDINGS KNOWN AS PALOMINO EXECUTIVE PARK; AND PROVIDING AN EFFECTIVE DATE.

The Resolution title was read by Mr. Schofield. Mr. Marty Hodgkins, Director, Planning, Zoning & Building and Ms. Olga Prieto, Associate Planner, were present to address the Council.

Ms. Prieto reported that this petition is to amend the previous approval for Palomino Park. She noted that the Agent for the petition is Mr. Kenneth Blair, and the attorney for the project is Mr. Chuck Edgar, both of whom were present on behalf of the petitioner. She explained that this request is to modify the previously approved master plan to remove the 50% which was 55,000 square foot limitation of medical office, and to allow all of the square footage to be professional medical office within the three buildings. She then showed a location map of the project indicating that it is located just south of the White Horse development on the west side of SR7 and just north of the proposed Wellington Parc. Ms. Prieto said that staff recommended approval with Conditions of Approval that she said Mr. Hodgkins would elaborate on.

Mr. Hodgkins explained that there are several proposed changes which he went on to outline as follows:

- (1) individual who is to pay the future costs will be the Property Owners Association rather than the Property Owner.
- (2) That "Certificate of Occupancy" is changed to the "Certificate of Shell Completion" for the three structures that exist on the site. He noted that there is one building left that still does not have its final shell of completion.
- (3) Condition #8, page 176 of the agenda, change the December 31, 2008 date for recordation to March 31, 2009.
- (4) Note that the provision for cross access on the plat on Tract 4 provides access to the south.
- (5) Reimbursement to the owners of the Palomino Executive Park property by the Wellington Parc project to help defray the cost of installation of the traffic light. Based on Andrea Troutman, Traffic Consultant for the Village, the proportionate share was recommended to be 73% (paid by Palomino) vs. 27% (paid by Wellington Parc project)

Councilwoman Benacquisto asked if the property owners agreed to the 73%/27% split. Mr. Hodgkins said that staff only received those figures just minutes ago, and the petitioner was hearing this at the same time as Council. Councilwoman Benacquisto then asked would the Village need their agreement on the split in order to move forward with this. Mr. Hodgkins said that he hoped that the petitioner would agree to that split, but that it was Council's decision to make.

Mr. Kenneth Blair, Agent for the petitioner, addressed the Council noting that Counselor Chuck Edgar was with him who has been having conversations with the Village. Mr. Blair noted that the petitioner was in agreement to the 73%/27% split recommended by Mr. Hodgkins.

Mr. Chuck Edgar spoke on behalf of the owners of Palomino Park. He explained that Palomino Park consists of three different buildings, two of which are office condominiums. He said that the two-story building was sold out about the same day that the Certificate of Completion was issued a little over a year ago. Mr. Edgar further stated that the one story building is owned by one individual through his company in Boca Raton. The three-story building is office condominiums of which the only party left that could be called a developer is a minority unit owner. Mr. Edgar said that this application was made on behalf of them for the unsold units, but also the one story building and the doctor group that owns the two story building which is currently not allowed to be 100% medical. He further stated that the recommendation in their application is based upon Palm Beach County Engineering saying that the automobile trips for medical use, which are typically higher, are available on the US441 corridor. He also pointed out that there is more than ample parking available. Mr. Edgar said that what they have recommended is not only beneficial for the property, but also is in line with the Village's Corridor Study the goal of which is to create more employment centers with higher paying jobs. He further explained that at this time the Property Owners Association is governed by a Board of Directors that consists of a representative from each building which means that the developer does not control that association. Mr. Edgar said that all of the participants in this effort are sharing the expense in working to obtain this approval. He said that he would glad to address any concerns regarding the staff's recommendations, but if there are none, he wanted to discuss the Conditions of Approval.

Mr. Edgar said that the petitioners are agreeable to the change regarding the measurement date for the County finally making a determination on whether the traffic signals needed to run from the Certificate of Completion. He said that he didn't think anyone had contemplated that this would be an office condominium building where someone could buy a unit and not build it out and get a Certificate of Occupancy for many years. He reiterated that they were agreeable to the 73%/27% split. He explained that the old number was based upon the 50/50 medical/non-medical. He said that it was their understanding that it was merely adjusted to the higher trip count because of the allowed medical use that they hope to give the project. Mr. Edgar further stated that it has always been a condition that they grant an access easement to the property to the south, and this condition merely states that they will be doing it in advance rather than negotiating it with the owner. He felt that the Village staff has included appropriate safeguards so that they are not held hostage by that owner. Mr. Edgar then explained that the one issue that has delayed this item being heard by Council is the requirement that a bond or another surety be placed for the traffic signal. He said that their engineers are estimating this to be roughly \$490,000. Mr. Edgar said that he did not know whether staff or their consultants have verified that number, but certainly they all believed that they are in that ballpark. He explained that when this was originally made a condition, it was done so via a "site plan certification" which was done when the property was owned by Mr. Applebaum. The property was platted, and each tract was conveyed to a different entity so there has never been a "master" developer. He further explained that the condition stated that no Certificate of Completion was to be issued until the bond was posted; however, somewhere this requirement was lost in the shuffle. Mr. Edgar also noted that not only was the master site plan approval granted which did not make note of the bonding requirement which one would expect, but a plat was recorded, building permits were issued and Certificates of Completion for the buildings were also issued. He then said that after that the Building Department has routinely been issuing Certificates of Occupancy for both medical and non-medical space. Mr. Edgar said that it wasn't until this issue came up, and staff met with him about 2 – 2 ½ months ago, and after several days of searching came up with this bond requirement. Mr. Edgar said that the only previous time that they had seen it was when it was a Palm Beach County recommendation and not a requirement. He added that he raised this because they are dealing with the Property Owners Association and not

a developer who has a great deal of bonding capacity or a general contractor where this would be their normal course of business. Mr. Edgar said that he knows that the Council had met the previous day at their workshop on this, and that they are concerned with the ability of the association to collect the money to install the signal if Palm Beach County determines that it is warranted. He said that they previously offered some assurances that are not instantaneous, but ones that they thought were fair under the circumstances. Mr. Edgar said that they thought that they had an agreement with staff that is what would be presented to Council at this meeting. He said that they learned otherwise about a week ago, and were caught off guard. He said that he was asking Council to reconsider the preliminary decision that had been discussed the previous day. Mr. Edgar said that the Property Owners Association consists mostly of small business people, and medical professionals who will have to incur an upfront cost of somewhere of between \$10,000 to \$15,000 just to get a letter of credit or bond in order to satisfy the requirement as well as other costs that will be incurred in obtaining that. He said that he knows that this was not the first time that a group of owners came before Council requesting them to take something on good faith. Mr. Edgar used as an example, Pinewood East wanted an entry feature and a wall yet they did not even have a homeowners association and yet the Village worked with them and installed the wall with the risk that if Pinewood did not come up with the money that the Village would either have to take down the wall or assume the responsibility for it. He said that here they are dealing with millions of dollars worth of property and the right to assess it and lien it in the highly unlikely event that the Property Owners Association would fail to perform its legal duty. He noted that was the duty that had been expressed in all of the documents that were recorded, and the documents were received by every buyer before they even signed their contract. The buyers were put on notice that this requirement as well as the access easement were in place and they would have to deal with it which they are ready to do. Mr. Edgar said that they are only asking that Council reconsider that condition because it will put an undue burden on these property owners. He said that other than that, they are agreeable to all of the other conditions, and request Council's approval of the resolution. He concluded by stating that he was available to answer Council's questions.

Councilwoman Benacquisto said that if she understood correctly, Mr. Edgar was saying that everyone understands that putting the signal in is their responsibility. She said that Mr. Edgar had said that he believed it would be an undue burden on the owners to spend \$10,000 to \$15,000 to post the bond, yet he wanted the Village to take this on good faith that in 24 months they would be able to accumulate \$500,000. She said that she wanted to have a better feeling of the conflict that Mr. Edgar had just expressed. In response, Mr. Edgar said that firstly this is an expense that was not planned on and is unneeded, one which they will never recover their funds. Secondly, he said that the assessment would be levied at this point. He then said that another issue is that to the extent that an association needs credit ability, it would tie that up as well as because there is a lot of effort that goes into that. Mr. Edgar further stated that this also raises issues in terms of selling units. In addition, typically in order to obtain a bond or issue a letter of credit which would be the most likely avenue, it would have to be renewed every year so that would be an additional expense and effort. He said that what he emphasizes the most is that this requirement is really unnecessary. Mr. Edgar said that there are certain things that you expect responsible citizens in the community to be responsible for especially when they already are aware of their legal obligation. He said that while the request from staff is understandable, they would like Council's consideration that this is not really necessary in this context.

Vice Mayor Priore said that he was confused by the numbers that Mr. Edgar had just given because the Village just approved installing a mast arm light at Quercus and Forest Hill Blvd. at a cost of \$250,000 which is half of the \$500,000 that Mr. Edgar had estimated their light would cost. Mr. Edgar explained that this light would be on SR7 which would require work to be done in order to create an intersection.

Vice Mayor Priore said that the request is to convert from regular office to all medical. He pointed out that medical creates a great deal more traffic which would speed up when a traffic light would be needed at that location. Vice Mayor Priore further stated that the real issue is the surety that the money will be available and collectable at that time. He said that it is a lot simpler to have a bond posted which is in the bank and, therefore, available. Vice Mayor Priore said that the petitioner has the assurance that if the County determined that the light is not needed, then their monies will be refundable. Mr. Edgar said, however, the cost of obtaining the surety would be lost. He did note that all of the owners of the property are in favor of the light.

Councilman Willhite asked how much of the 55,000 square is occupied as medical/professional. In response, Mr. Blair said that they are essentially maxed out at the 55,000 square feet. Councilman Willhite asked if they have had a request for more medical space. Mr. Blair responded affirmatively.

Councilman Willhite asked if the Village has received any plans from Wellington Parc for their property. Mr. Hodgkins said that there is an approved project on that site of about 50,000 general professional office, and for 90 townhouse units on the west side of the property. Because of the general economic situation, he said that Council did approve the extension of their concurrency approval. Mr. Hodgkins said that Wellington Parc does have that present approval; but it is unknown whether they will build that noting that they could come in for something different.

Vice Mayor Priore asked what Palm Beach County's requirement was when a light is deemed necessary at some point in the future, and the developer is developing the property particularly if they require the money to be in a surety or will they bill for it at the time the light is installed. In addition, Vice Mayor Priore questioned whether the County was imposing this requirement or was the Village instituting it on its own. In response, Mr. Hodgkins said that it is his understanding that the County does require the surety to be posted if the traffic light is deemed necessary. He said that the Village's traffic consultant had recommended that requirement be included, and it was also a recommendation from the County.

Mr. Kurtz said that the requirement isn't that of the Village, but that it was a recommendation by the County, and the requirement is a suggestion by staff. He said that the requirement was already imposed on them at the site plan certification timeframe. Mr. Kurtz said that Ms. Troutman, the Village's traffic consultant, has been consistent with the recommendation from the master planning time frame about this being a need.

Vice Mayor Priore said if they do this and the Village does not get the surety bond, would the County look to the Village to install the light if they deem the light necessary, and the Village is not able to collect the money from the property owns in two years from now. Mr. Kurtz said that would potentially become the obligation of the Village as a whole, but the requirement would not be imposed; it would be a choice that is made at that point in time.

Councilwoman Benacquisto said that if the County requires the traffic light to be built then it wouldn't be an option at that point. She said that the Village is looking to the designation of the Palm Beach County Traffic division based upon the recommendation before Council. In response, Mr. Kurtz explained that this project is the reason why the light may be deemed necessary which it is why it would ordinarily imposed on this project. He said that if this is not imposed upon this project, the Village does not have a good mechanism to collect the monies, and if it was determined that the light should be installed, some governmental entity would have to do it. He said that he was not sure whether that entity would be the Village and if it had to be paid by the Village; he was not sure whether Palm Beach County would come to the conclusion that it actually had to be installed.

Councilwoman Benacquisto said that she supported the conversion of the office to medical office because she felt it was a good thing to do for that particular development considering that is what is currently in demand at that property. However, she did have a concern regarding the surety bond and future Councils having to deal with that.

Councilman Willhite said that the County has to make a decision in 24 months on whether the light is needed. He asked if there was any timeframe that they would have to say yes or no to the light if that money is sitting in a bond. Mr. Kurtz said that it would be 24 months from the final Certificate of Completion or Notice of the final Certificate of Completion which is going to be approximately 24 months from this approval. Councilman Willhite asked if the light would have to be built within a timeframe. Mr. Kurtz explained that the advantage of having a bond is that once the County makes the decision, it would move as expeditiously as possible and the bond monies make that possibility a reality.

Mr. Edgar informed Council that all three buildings have Certificates of Completion and are roughly a year old. He said that they were actually talking about a 12 month time frame rather than 24 months. Secondly, Mr. Edgar said that someone had mentioned the Village collecting the money; however, he said that the Village doesn't have to collect the money, and that the Village would only do that as a remedy whereas the bond would not be called upon unless the Property Owners Association failed to make a payment. He said that it is a security document and is not a source of payment. Mr. Edgar further said that what they are really saying is that within the next year all of these owners who are well aware of this requirement know that they will have to come up with approximately \$500,000, and will ultimately be reimbursed for some of it. He said that this will not be a change of regime with people who say they are not going to pay for the light. He further stated that this is a legal obligation which they are giving the Village the right to enforce it, and not necessarily be a major player in collecting the money.

Mayor Bowen said that if this money is going to be needed in 12 months, shouldn't they just consider doing an assessment. Mr. Edgar said that would be the decision of the Property Owners Association Board. Secondly, he said that he didn't want to ask them to put \$500,000 into a 3% savings account or something for a year. Mayor Bowen felt that might be beneficial if it would offset the cost.

Vice Mayor Priore said that Property Owners Associations and Homeowners Associations have to put monies aside for Reserve. Mr. Edgar noted that the previous morning the Property Owners Association adopted their annual budget for 2009 and elected not to have Reserves. Vice Mayor Priore asked if when the time comes that they will need to re-roof, re-do the parking lot, they will assess themselves to pay it. Mr. Edgar said each condo association would be responsible for its own re-roofing, elevators, repainting, etc.; however, they are now talking about the Property Owners Association which would only be responsible for the parking lot.

Vice Mayor Priore suggested that the Property Owners Association look at starting a Reserve Fund for this purpose because that would at least provide Council with a comfort level that there is an active ongoing attempt to save this money so that the money is readily available when it comes time for it to be used. Mr. Edgar said that he couldn't agree to that for the Property Owners Association, but what they had done at Mr. Kurtz' suggestion is that they agreed that they will pass a resolution adopting the assessment now and only defer the due date to see if the light was ever going to be needed, and collaterally assign the right to enforce it to the Village should the Property Owners Association fail to follow through on it. Mr. Edgar said that the issue of the ultimate payment and the element of enforceability is not in doubt, but is only a question of timing.

Mr. Schofield asked if the Property Owners Association decided not to provide the money, how would the Village then collect the money. Mr. Edgar said that the Village would enforce it like a code enforcement lien through the judicial process. Mr. Schofield said that the Village would then have to go to Court. Mr. Edgar responded affirmatively. Mr. Schofield said that is where the Village ultimately had a problem. He said that what they could not get passed is that if the association chose not to pay that the Village would be in court for a time period that they couldn't determine with an outcome they couldn't be certain of, and it would be a payment that would transfer from the developer or successors to the Village. Mr. Schofield noted that the Village's Comprehensive Plan is very specific and states that the public will not pay for the cost of new development. He said that Mr. Edgar worked very hard to work this out, but in the final analysis, if the association chose not to pay the Village would have to go to court to collect the money.

Vice Mayor Priore said it is not only the fact that the Village would not be collecting money; but it is also the added consequences of legal fees that the taxpayers would be imposed with. Mr. Schofield responded affirmatively. Mr. Edgar added that those fees could be made reimbursable, and would never be an issue, and it is possible that the documents might already state that. Mr. Kurtz said that he believed they did include that language. Mr. Edgar said that it comes down whether you count on people obeying the law or do you count on them to break the law. He said that right now the legal obligation is for them to pay for the light.

Mayor Bowen said that they all believed that the light will be needed, and will be required. He thought that perhaps they go ahead and make the assessment now and put the money in escrow and let it earn 3% which may be a less expensive way of doing this. He also believed that the people who work at that location will feel more comfortable if a light was located there because it is not an easy location to get to. Mr. Edgar said that one of the alternatives is to put up a cash bond or an escrow agreement which would entail the assessment at this point, but they are also looking at the worst economic times. He said that he will leave the decision to the Council, but he did urge Council's approval of the main resolution which is in accordance with the design for the Corridor Study.

Public Hearing

A motion was made by Councilman Willhite, seconded by Councilwoman Benacquisto, and unanimously passed (4-0) to open the Public Hearing.

There being no public comments, a motion was made by Councilman Willhite, seconded by Councilwoman Benacquisto, and unanimously passed (4-0) to close the Public Hearing:

A motion was made by Vice Mayor Priore, seconded by Councilwoman Benacquisto, and unanimously passed (4-0) approving Resolution No. R2008-110 as presented with the following amendments:

- **Condition #6: individual who is to pay the future costs will be the Property Owners Association rather than the Property Owner.**
- **Condition #7: The language "Certificate of Occupancy" is changed to the "Certificate of Shell Completion" for the three structures that exist on the site.**
- **Condition #8: Change the December 31, 2008 date for recordation to March 31, 2009.**
- **Note that the provision for cross access on the plat on Tract 4 provides access to the south.**

- **Condition #9: Reimbursement to the Palomino by the Wellington Parc project to help the defray the cost of installation of the traffic light recommend a 73% (paid by Palomino) vs. 27% (paid by Wellington Parc project)**
- C. ORDINANCE 2009-01 (NOISE STANDARDS) AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, RELATING TO NOISE STANDARDS; AMENDING THE CODE OF ORDINANCES OF THE VILLAGE OF WELLINGTON, FLORIDA BY AMENDING CHAPTER 36, OFFENSES AND MISCELLANEOUS PROVISIONS", ARTICLE III, "NOISE STANDARDS"; SEC. 36-32, "EXEMPTIONS" TO INCLUDE USE OF EQUIPMENT ASSOCIATED WITH NORMAL MAINTENANCE OF A GOLF COURSE; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

The Ordinance title was read by Mr. Schofield. Mr. Hodgkins and Ms. Rose Taliau, Manager, Code Compliance were present to discuss this item.

Mr. Hodgkins explained that this is a proposal to change the Village's current noise ordinance. He noted that the current ordinance provides that maintenance can begin at 7:00 a.m. Monday thru Saturday and at 9:00 a.m. on Sundays. The proposed ordinance would now allow golf courses to begin maintenance of the golf courses beginning at 6:00 a.m. every day. Mr. Hodgkins said that there has been a considerable amount of discussion regarding this issue, and there were complaints received within the past few months regarding the activities of the golf courses with regard to the early morning maintenance. He said that in many instances the earlier time is standard operating procedures associated with golf courses throughout other jurisdictions. Mr. Hodgkins said that the Council was given two letters from: (1) Binks Forest Golf Course and (2) Wanderers Golf Course who requested this change. He said that based upon discussions those they had, they discussed the hours of operation based upon the original Palm Beach County approvals. He said that when those approvals were originally given there were no specific site standards applicable to golf courses regarding noise and maintenance activities. Mr. Hodgkins pointed out that since that time; the Village has adopted the Noise Standards which allows maintenance to begin at 7:00 a.m. Monday through Saturday and then 9:00 a.m. on Sunday.

Public Hearing

A motion was made by Vice Mayor Priore, seconded by Councilwoman Benacquisto, and unanimously passed (4-0) to open the Public Hearing.

1. Rocky Goins, 850 Forest Glen Lane. Spoke in support of the proposed ordinance. On another note, he said that the Village had prevented the owners of the Binks Golf Course from installing netting between the driving range and the 10th Fairway. His concern is that one day someone will be hit. He said that the Binks Management has expressed an interest in putting in a safety net, and Mr. Goins felt that this is something that the Village should look at.
2. Josef Freeman, 1742 South Club Drive. Spoke in opposition to the proposed ordinance.
3. Mike Nelson, 13650 Columbine Avenue. Mr. Nelson, representing the Palm Beach Polo and Country Club, spoke in support of the proposed ordinance.
4. John Motzer, 245 Button Bush Lane. Spoke in opposition to the proposed ordinance.
5. Sampson Nebb, 1844 South Club Drive. Spoke in opposition to the proposed ordinance.
6. Wade Byrd. Mr. Byrd, representing the Wanderers' Club, spoke in support of the proposed ordinance, and why the time change was needed in order for the golf course to be economically viable.

7. Charles B. Dardis, 2620 Neaton Court. Spoke about the poor conditions of the Executive Course, and in opposition to the proposed ordinance.
8. Jerry DiRosa, 15188 Oak Chase Court. Spoke in support of the proposed ordinance.
9. Dan Fuller, 1500 Menorca Court. Spoke in opposition to the proposed ordinance.
10. Earl Moore, 1510 Menorca Court. Spoke in opposition to the proposed ordinance.
11. Linda Curcio, 15734 Bent Creek. Spoke in support of the proposed ordinance.
12. Terry Strongin, 400 Binks Forest Drive. Mr. Strongin of Aquila Partners, owners of the Binks Golf Course, spoke in support of the proposed Ordinance and why the time change was needed in order for the golf course to be economically viable.
13. Irene Alperstein, 17236 Gulf Pine Circle. Spoke in support of the proposed ordinance.
14. Greg Schroeder, 400 Binks Forest Drive. One of the Directors of Binks Forest Golf Club spoke in support of the proposed ordinance.
15. Carmella DeMatteo, 15230 Meadow Wood Drive. Spoke in opposition to the proposed ordinance.
16. John Brewer, 790 Sage Avenue. Spoke in support of the proposed ordinance.
17. Laura J. Freeman, 1742 South Club Drive. Spoke in support of the proposed ordinance.
18. Jordan Paul. Aquila Property, owners of Binks Golf Course. Spoke in support of ordinance.
19. Scott Davidson, 13652 Jonquil Place. Spoke in support of the proposed ordinance.

Mayor Bowen read the following cards into the record:

1. Elaine Hogarty, 1790 South Club Drive. Opposed the proposed ordinance.
2. Nancy Player, 1856 South Club Drive. Opposed the proposed ordinance.
3. Wilson B. Smith, 1821 South Club Drive. Opposed the proposed ordinance.
4. Randy DeLano, 15194 Oak Chase Court. Opposed the proposed ordinance.
5. Anita Nebb, 1844 South Club Drive. Opposed the proposed ordinance.
6. Laurence H. Murray, 112 Fernwood Circle, Royal Palm Beach. Supported the proposed ordinance.
7. Ron Curcio, 15734 Bent Creek Road. Supported proposed ordinance.
8. Irwina Frank, 15250 Meadow Wood Drive. Opposed proposed ordinance.
9. Morley Alperstein, 17236 Gulf Pine Circle. Supported proposed ordinance.
- Elizabeth McKeen, 1907 South Club Drive. Supported proposed ordinance.

There being no further comments, a motion was made by Councilwoman Benacquisto, seconded by Councilman Willhite, and unanimously passed (4-0) to close the Public Hearing.

Councilman Willhite stated that there were two different times in the proposed ordinance that were being discussed: (1) Monday through Saturday and (2) Sunday. He said that his concern is the blanket time of 6:00 a.m. Although he understands that Sunday is a very busy golf day, his concern is that now there is a three hour difference from the current 9:00 a.m. start time to the proposed 6:00 a.m. He was concerned how this would impact those people who did not have to go to work that day and were relaxing. His other concern is that the golf courses are currently violating the current ordinance time, and he questioned how much would the burden be upon code enforcement to enforce that time frame. Councilman Willhite asked if the Village had an adequate number of staff to do the enforcement. In response, Mr. Schofield said that for several reasons, they will be requesting additional code enforcement staff in next year's budget. He explained that the Village does have the ability to do the enforcement and some days the officers are on the streets at 5:00 a.m. although they are there at that time less than in the past. Mr. Schofield said that in order to do enforcement at that time, the code officers need access to the golf course. He explained that the way they generally gain that access is through a resident's permission. He noted that the resident will call, and then the Village will schedule a time for the code officers to go out there. Mr. Schofield pointed out that the ordinance doesn't say that they can't mow, but it says that prior to 7:00 a.m. on weekdays and

Saturdays and prior to 9:00 a.m. on Sundays, the noise level crossing the residential property line can't exceed 50 decibels. Mr. Schofield explained that 50 decibels is about the level of normal conversation. He anticipated that there would be more code enforcement, and most of it would be by rearrangement so that they could go out to the property with a test meter to measure the decibels.

Councilman Willhite apologized for not prefacing his comments by stating his appreciation to both Binks Forest Golf Course and Wanderers Club for the investment they have made to the community. He said that they are two beautiful courses which have enhanced the property values of those surrounding neighborhoods. He questioned why this issue was just being brought up now noting that both courses have been operating for quite a while. Councilman Willhite asked if they are just finding that they have increased play so they now need to make the courses playable earlier, or because there were some infractions prior to this. Mr. Schofield said that the Village had not been receiving complaints. He explained that on these types of issues, the Village does not do enforcement absent a complaint. With regard to why the complaints are now increasing, he speculated that he believes there is a change in the relationship between the golf course and the homeowners association which he believed needed to be worked out. Mr. Schofield said that many of the complaints were, for example, we don't have use of the facilities; we now have a green wall behind us, etc., so there has been a significant change in the relationship between what formerly was the Wellington Club and is now the Wanderers Club and the surrounding residents. He thought that if Council spoke with many of those residents, they will see that the complaint lies as a result of the current change in the relationship.

Councilman Willhite questioned the maintenance for the golf courses that had previously operated, but were now not functioning. He noted that the Greenview Cove course had previously been manicured quite well when it was first purchased, and perhaps its appearance has since diminished. He questioned if there was any room in the ordinance to include an assurance from those owners that they will try to enrich the appearance of these other non-playable golf courses. Mr. Schofield said that he could certainly approach the course owners and ask them that, but if Councilman Willhite was asking if there was a way through either code or ordinance for the Village to require maintaining them to the standard that a playable golf course is, it does not exist with the code.

Councilman Willhite asked if there was any room for compromise or were they strictly saying 6:00 a.m.

Mr. Kurtz said that before Council responded to Councilman Willhite's question, he wanted to clarify a comment that had been made by Mr. Schofield who had made reference to the decibel level; however, he noted that there is a prohibition against decibel levels exceeding a certain amount when they are going across property lines. In addition, there also is a prohibition that regarding the operation of lawn and garden equipment that emits sound across a property line to inhabited residential land except between the hours of 7:00 a.m. and 10:00 p.m. daily and between the hours of 9:00 a.m. and 6:00 p.m. on Sundays. Mr. Kurtz said that there is a blanket prohibition on lawn equipment regardless of the level of the sound.

Councilman Willhite again asked his fellow Councilmembers if there was any room for compromise on the time, or was there an ordinance that had previously been put into place that should be enforced.

Councilwoman Benacquisto said that it is clearly an untenable situation when there is one neighborhood that is surrounded by a golf course where both the owners of the course and the residents are advocating the change. While, on the other hand, there is another golf course where the owners are advocating a change and the residents clearly are opposed to it. She thought that one could say that there is not a standard solution for this yet the Village as a governmental entity has to

try and devise something that does work. Councilwoman Benacquisto said that she empathized with the neighbors that surround the Wanderers Golf Course because they are so unhappy. She agreed with Mr. Schofield in that much of what has been said not just publicly that evening, but in casual conversation, etc., that there is a real sense of loss of not being able to view a golf course from their backyards which they bought into. She said that she didn't know what the answer is from their perspective or what kind of outreach they could do to heal those wounds, but it does exist. Councilwoman Benacquisto didn't believe those feelings would change by any decision that Council made that evening. She felt that the management of the course had some work to do which she hoped would happen. With regard to a compromise, Councilwoman Benacquisto said that she was willing to further investigate this; however, she felt that a 9:00 a.m. start time on Sundays is unacceptable. She suggested that they look at what a compromise could bring.

Vice Mayor Priore related to the comments that were made by the individuals who said that the maintenance should be begin at 6:00 a.m.; 6:30 a.m. and one individual who said that no where in Palm Beach County does maintenance begin before 7:00 a.m. He felt that it was incumbent upon the Village to determine exactly what the start times are. Vice Mayor Priore believed that there could be a compromise in the way it is done, i.e., using hand mowers to begin the process. He said that much of the equipment has different levels of decibels, and if they are really removing the dew by brushing the greens, there is a limited amount of noise associated with that. He was sure that a lot more noise would be created if they were treating the entire course. Vice Mayor Priore concurred with Councilwoman Benacquisto in that it is obvious that there are two distinct differences: one golf course appears to have people present in support of changing the time while the other course has people blatantly opposed to it. He felt that is an issue that has to be worked out between the corporate group and the neighbors. Vice Mayor Priore said that he needed to know more about the times, and said that he recalled when they passed the right for Binks to be purchased and be developed which he supported from the beginning, and that he didn't want to do anything that will hamper their ability to successfully operate the course. Vice Mayor Priore said that he did not say that negatively toward the Wanderers Club which is a different operation, and he supports what they are doing as well; however, in all cases, they need to be cognizant of the people that surround them and how their lifestyles may be impacted. He said that it was very important to hear from the gentlemen who works the golf courses around the County, and that the 6:00 a.m. is the general start time; however, the superintendent said that they don't send anything out before 6:30 a.m.; yet the Village is hearing that there is equipment out there at 4:30 and 5:30 a.m. He felt that the Village really needed to find out the true facts because right now he was hearing differences which he wasn't sure were based upon frustration and emotion. Vice Mayor Priore said that the question remaining is whether 6:00 a.m. or sometime around that time is a reasonable hour for maintenance on a golf course to begin. He wanted to ensure the success of the golf courses while at the same time ensure that the residents that live in the surrounding communities are not overly impacted. Vice Mayor Priore read a golf course disclosure that was provided to residents on the golf course. He noted that the first item on the disclosure is "noise from maintenance equipment, noise from golfers, restrictive cause for planting of trees, reduction of privacy caused by golf carts. He stated that there are certain things that have to be expected when one lives on a golf course; however, some people are saying that if they take away their ability to even see the course, they now have a different position on the golf course. Vice Mayor Priore felt that these were very deeply seeded issues. Speaking on the timeline, he said that he was open to a compromise. He said that he wanted to be able to see that the courses are open, but they will also have to make some compromises, i.e., daylight savings time. He believed that there are a lot of opportunities for them to find a solution and to make this happen.

Mayor Bowen said that it is obvious that a 6:00 a.m. time is probably the right time. He felt that it is incumbent upon the Village, and the people at the Wanderers Club to somehow fix some of these problems because whether they are real or perceived, these people are unhappy. He noted that for

the last 25 years, the golf courses have been doing maintenance earlier than 7:00 a.m. and now, there suddenly is a problem which points to something more than just the 6:00 a.m. mowing time. Mayor Bowen felt that the Village and the course owners have to do something to bridge the gap between the owners of the Wanderers Club and the residents whose properties surround it. He said that hopefully they could fix these issues so that the ordinance can be passed with a 6:00 a.m. start time which he believed was the correct time. Mayor Bowen said that he wanted to see the Council table this ordinance and try to get together with the Wanderers Club to try and figure out a way to solve this problem. Councilman Willhite added that it should be all of the golf course owners and not just the Wanderers Club.

Vice Mayor Priore suggested that they first go ahead and get confirmation of maintenance times at other courses throughout Palm Beach County, and if their start time is actually 6:00 a.m., then the Village will not be doing anything contrary to what is being done throughout the County. He thought that staff could very easily make telephone calls to both public and private golf courses throughout Palm Beach County to ascertain this information.

Mr. Kurtz asked Vice Mayor Priore if he wanted staff to look at the actual practices and also to the regulatory part of it. Vice Mayor Priore also agreed with Mayor Bowen that they should get together and try to work out the differences that have occurred over the last year.

Councilman Willhite asked if Council had an interest in also asking if there are any special exceptions above that time for specific items. He said particularly if there was a large tournament planned, that the Village would allow them via a Special Use.

Mayor Bowen addressed why the Village was not presently enforcing the ordinance as it exists. He said that the Village has sort of given the golf courses a moratorium while this is being studied and then will decide what the times will be which he believed was fair. He did not believe it was fair for the Village to say that they were going to go out and do enforcement for the present times when they are considering making the time 6:00 a.m.

Councilwoman Benacquisto believed that whatever the time is that is decided upon has to be enforced.

Councilman Willhite agreed that once that decision is made upon a definite starting time, there needs to be strict enforcement because this is the requirement of an ordinance of the Village.

A motion was made by Councilman Willhite, seconded by Councilwoman Benacquisto, and unanimously passed (4-0) to table Ordinance No. 2009-01.

Mr. Schofield said that he will direct staff to meet with the Wanderer's Club, Binks Forest Golf Club and Palm Beach Polo and the residents to see if there is some common grounds as a means to solve the time problem. Staff will also survey the private and public golf courses around the County to determine their start times.

- D. RESOLUTION R2009-02 (GRAND PRIX FARMS VACATION /ABANDONMENT)
A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON,
FLORIDA, TO VACATE, ABANDON, DISCONTINUE AND CLOSE 5.18 ACRES OF
A PORTION OF THE FUTURE LAKE WORTH ROAD EXTENSION RIGHT-OF-WAY
FROM SOUTH ROAD WEST TO THE ACME IMPROVEMENT DISTRICT C-2 CANAL
LOCATED 1.25 MILES WEST OF THE INTERSECTION OF LAKE WORTH ROAD
AND SOUTH SHORE BOULEVARD, AND PROVIDING AN EFFECTIVE DATE.**

The Resolution title was read by Mr. Schofield. Mr. Kurtz then presented an accompanying Acme resolution which is subsequent to the approval of Resolution No. R2009-02.

RESOLUTION NO. AC2009-01: A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE ACME IMPROVEMENT DISTRICT GIVING NOTICE OF THEIR INTENT TO CONVEY RIGHT OF WAY PROPERTY HAVING BEEN A PORTION OF AN ABANDONED SECTION OF LAKE WORTH ROAD TO FAR NIENTE STABLES VI, LLC; AND PROVIDING AN EFFECTIVE DATE.

Mr. Kurtz reported on the Resolutions. He explained that once the properties are vacated, the ownership of the property does not necessarily go to the property to the north, but is split along the center line of what would have been that right-of-way with the northern half going to the property to the north, the Far Niente property, and to the south, the owners are the Acme Improvement District with the C-24 canal. Mr. Kurtz said that the question becomes what to do about that property. He explained that there has been discussion and direction that the property is not worth anything because it is undevelopable. He said that it would be a 60 foot strip, and staff can figure no way that could become developable. In addition, that strip is not necessary for the District operations and thus becomes surplus property. Mr. Kurtz noted that the only party who would have an interest in it is the property to the north if it was sold as an independent piece that is non-developed. If that were done, they would be creating a nuisance situation. He further stated that Acme says that the property is basically undevelopable, there is a conclusion in there based on Council's comments and direction that it is effectively not of any value, and that the best solution is to transfer the property to Far Niente so that they can make it a part of their development thus putting the property back on the tax rolls for assessment and tax revenue purposes. He felt that is the best thing that could be done with that property from the District's standpoint. Mr. Kurtz further explained that this resolution is a Notice of Intent to convey the property to Far Niente, and also provides that the Village Manager and the Village Attorney take all steps necessary to make that available to them which would mean that the Notice of Intent to Sale has to be published in the newspaper for three weeks. It will then come back on Council's Agenda for approval of the actual conveyance document. Mr. Kurtz said that procedure has been explained to the attorney for the property owners and he believed that they understood those conditions. With regard to the advertisement, Mr. Kurtz explained that is because it is an Acme District Improvement property and before that property can be sold, a Notice of Sale has to be posted in the newspaper. He further noted that it doesn't give anyone rights to do anything, but it is something that remains a requirement from the beginning of the Acme days.

Vice Mayor Priore asked Mr. Kurtz if Council was approving Resolution No. R 2009-02 which is the vacation abandonment, and that then they would come back and sit as Acme and approve Resolution AC2009-01. In response, Mr. Kurtz said that Council would be approving Resolution No. AC2009-01 because this resolution provides the Notice of Intent and directs staff to prepare the conveyance instruments in exchange for the recovery of all costs associated with the advertisement requirement, the attorney's fees incurred and the preparation of the document. Mr. Kurtz said that the Council would need to do two separate motions. They will approve one Resolution as the Village Council and the other as the Acme Improvement District Board of Supervisors. Mr. Kurtz further explained that the Council must first approve the vacation/abandonment in order for this transfer of property to become necessary.

Councilman Willhite said that the Village is calling this property surplus which then gives them the ability to deed this property over because it isn't being surplused for a public use. Mr. Kurtz said that was correct explaining that the vacation results in the Village's interest in the property; however, because of the configuration of the properties and the fact that the Acme Improvement District owns

the property to the south, by operation of law, the title in the southern half goes to the Acme Improvement District. By virtue of the Acme resolution, Council would be declaring the property surplus, and as the resolution is currently drafted, it would also be determined that there was no value in that because of the sale conditions that he had previously explained and the fact that the property is not needed, and because the proposed conveyance is for nominal consideration.

Councilman Willhite thanked Mr. Kurtz for including number 5 in the Acme resolution which stated that the owner to the north will incur all costs associated by the Village. He said that he had requested that this section be included so that the Village does not incur any costs. He said that even though this is surplus property, Far Niente will have the monetary benefit to it.

Public Hearing

A motion was made by Councilman Willhite, seconded by Councilwoman Benacquisto, and unanimously passed (4-0) to open the Public Hearing

There being no public comments, a motion was made by Councilman Willhite, seconded by Councilwoman Benacquisto and unanimously passed (4-0) to close the Public Hearing.

Approvals

RESOLUTION NO. R2009-02

A motion was made by Vice Mayor Priore, seconded by Councilwoman Benacquisto, and unanimously passed (4-0) approving Resolution No. R2009-02 as presented.

RESOLUTION NO. AC2009-01

A motion was made by Vice Mayor Priore, seconded by Councilman Willhite, and unanimously passed (4-0) approving Resolution No. AC2009-01 as presented.

8. REGULAR AGENDA

A. ADOPTION OF FY 2008/2009 CAPITAL IMPROVEMENT PLAN (CIP)

The Agenda item was introduced by Mr. Schofield.

Ms. Mireya McIlveen, Deputy Director, Administrative and Financial Services, said that the adoption of the FY2008/2009 Capital Improvement Plan is essentially a housekeeping item. She said that this is the same capital budget that was previously presented to Council, and in total dollar amount, it is the same budget that was approved during the adoption of the FY2008/2009 Budget. Ms. McIlveen explained that the main changes from what was previously presented to Council is in the carryforwards and reallocations of the capital project budget which are projects that roll over from one year to the next or have either not been completed or have remaining balances. She said that a highlight is included in the Agenda Summary showing the various changes. Ms. McIlveen said that one of the changes is the release of \$4.1 million for community park design and renovation project. She said that it was previously decided that in the best interest, the Village will only be doing renovations at the Boys & Girls Club which will save them \$4.1 million from the originally planned capital plan. In addition, there was a reallocation of the 2007/2008 project balances for the Forest Hill Blvd. She further stated that this project has been discussed in great detail especially with regard to the economic development. Ms. McIlveen said that staff will come back to Council in the future with a more-detailed scope for this project. There was also a reallocation of the 2007/2008 project balances

to fund the C-2 mitigation storage improvements, reallocation of 2007/2008 project balances to tree nursery minor capital project and some minor project title changes. In total, the FY2008/2009 Capital Improvement Plan is \$19 million. The approved FY2008/2009 budget adopted on September 23, 2008 includes \$6.25 million for governmental projects and \$10.83 in water and wastewater projects as well as \$1.06 million in tangible personal property or fixed an asset which includes equipment, vehicles, etc. Ms. McIlveen said she was available to answer any questions.

Councilman Willhite referred to page 230 and said that there appeared to be a substantial difference in general revenues between the 2008 and 2010-2013 budgets. He asked Ms. McIlveen to explain the difference. Ms. McIlveen explained that the total dollar amount for 2008 includes any previous year's budgets that includes the total amount of general revenues available through FY2008. FY2009 only includes the dollar available for 2009. In light of that, Councilman Willhite said that it is not really a decrease in revenue, but it is that much that has been collected. Ms. McIlveen explained that is how much in general revenues are available from 2008. Councilman Willhite said then hypothetically it should have been around \$5 million prior to the carryforward. Ms. McIlveen noted that 2008 would have been a little higher as some project balances were reallocated. In FY2009, they reduced some of the reliance on the general revenues for capital projects.

Councilwoman Benacquisto asked if staff had taken into consideration what the Village shortfall may be going into the upcoming budget cycle with decreased revenue sharings, etc. Ms. McIlveen said that is all reflected in these documents. She further explained that the Capital Improvement Plan is not a one year plan noting that the Village adopts the five year and ten year plan which is linked to the projections for both available cash and for future revenues. She said that is why it is important to list each revenue source and to identify where the money is coming from. With regard to the gas tax, Ms. McIlveen said that was one of the changes that they had to make with regard to the \$4.1 million that was released, because they did not foresee having sufficient revenues in that pot of money for that project. Councilwoman Benacquisto said that there were some very good projects included, and she was happy to see the Village moving forward on the Forest Hill Boulevarding project.

Councilman Willhite said that his concern, as he has expressed at previous meetings, is that the country is in an economic crisis. He said that they got through the November election, and was approaching the Inauguration, but they still haven't seen anything showing the \$700 billion to \$800 billion that is rumored that the new President wants to put into these projects, etc. He said that he still has to be concerned about what is happening in Florida. He noted that a bill has already been filed in Tallahassee for the 2009 Legislative Session that would impose the 1.35 maximum on the millage and other things of that nature. He said that there is a town center that has been included in the budget every year; however, he still has concerns with the \$15 million sitting in the Capital Improvement Plan. He said that there have been studies done that say you will save if the projects are done; however you still have to allocate and spend the funds in order to do them. Councilman Willhite said that he still has concerns about that project being included in the plan. He further stated that when they originally talked about the municipal complex, they had talked about turning ground this month. Although they are obviously not yet at that point, he felt that the Village needed to obtain more backup information on that project.

Vice Mayor Priore felt that it is imperative now more than ever for the Village to be prepared to have projects that are "shovel in the ground" ready. He said that the information regarding the Work Progress Administration (WPA) that this incoming administration is planning is that this is the closest that they will come to the plan that was enacted during the Roosevelt administration in 1930. He said that it asks that cities, counties, and states have "shovel ready" projects which is why he asked how ready and prepared the Village is at the Agenda Review meeting. Vice Mayor Priore noted that dollars will be available because the federal government recognizes that the way to stimulate this

market is by putting people to work and to have monies flow. He said that the way to put people to work is through projects. Vice Mayor Priore pointed out that the projects may be bridges, government buildings, roads; but whatever the case may be, they will stimulate the economy. He felt that the fact that the numbers are in the Capital Improvement Plan is an indication that the Village is ready to move forward. The fact that the Village says that they are ready to move forward is a pure indication that they will be in line if and when the monies become available for them to use.

Councilman Willhite said that he also is in favor of having the shovel ready projects, but he felt that the Village had other projects that were actually shovel ready and that he didn't feel that the municipal complex project was yet at that point because decisions haven't been made yet on the space utilization and overall needs. He said that the reason he has stated that he has trouble with that project is because they haven't done enough shovel ready studies yet, and the Village will be in line with those other projects that are ready at this time. Councilman Willhite reiterated that there needs to be more study and evaluation done on that project before it can be considered shovel ready.

Councilwoman Benacquisto felt that it was best to be prepared for any possibility which she believed the Village was doing. She concurred with Vice Mayor Priore on being ready, and felt it was important to note that the Council has multiple decision points before them as to whether or not to proceed with any of these projects. Councilwoman Benacquisto said that they can react if their revenue sources change more dramatically and stop the process on some of these projects if they need to; but, she felt that the Village would be doing a disservice if they are not ready.

A motion was made by Councilwoman Benacquisto, seconded by Vice Mayor Priore, and passed (3-1) with Councilman Willhite dissenting, approving the Capital Improvement Plan as presented.

B. ORDINANCE 2009-03 CHANGES TO CHAPTER 18 OF THE VILLAGE OF WELLINGTON CODE OF ORDINANCES

The Ordinance was introduced by Mr. Schofield. He stated that this is essentially where the Village adopts their building code, and Mr. Mr. Jack Tomasik, Building Official, was present to review that for Council. Mr. Schofield further explained that this provides the Administrative Chapter of the enforcement of the new 2007 Florida Building Code which will go into effect on March 1, 2009. He noted that the Village is legally required to adopt that code.

Mr. Tomasik explained that Chapter 1 allows the Village to enforce the Code. When the Village adopts the new codes on March 1, 2009, it will include all of the codes including the fire prevention code, plumbing, mechanical, building, gas, etc. Mr. Tomasik said that it is the Village's obligation to adopt this code at this time.

A motion was made by Councilwoman Benacquisto, seconded by Vice Mayor Priore, approving Ordinance No. 2009-03 on First Reading as presented.

Councilman Willhite praised the Building Department, and thanked Mr. Tomasik for working on this item.

The motion was voted on and was unanimously passed (4-0).

C. DISCUSSION OF THE VILLAGE COUNCIL FOR THE PURPOSE OF THE POSSIBLE NOMINATION OF A COUNCILMEMBER TO THE FLORIDA LEAGUE OF CITIES, INC. FLORIDA MUNICIPAL INSURANCE TRUST BOARD OF TRUSTEES

The Agenda item was introduced by Mr. Schofield. Vice Mayor Priore explained that he currently sits on the Board, and it is very difficult to have two people from the same municipality seated on the same board.

Council had no nominations and took no action on this item.

D. APPOINTMENT TO FILL THE VACANCY ON VILLAGE COUNCIL CREATED BY COUNCILMEMBER MARGOLIS' RESIGNATION

The Agenda item was introduced by Mr. Schofield.

Councilwoman Benacquisto felt that it was an exciting opportunity for the Village to potentially have a new member of the Council. She said that it presents the opportunity for a change in the dynamics provides for a great opportunity for a new voice, a new set of perspectives, and she welcomed the opportunity to appoint someone. Councilwoman Benacquisto said that she had a small concern about the process. She said that she wanted the Village to have an advertisement, qualifying period, close of qualifying period, and then to make a decision. She said that she was not looking to have the type of public forum that they have previously had. She noted that even as they sat at the meeting that evening, there were three new letters of interest that had come in, and she hadn't yet had an opportunity to look at their credentials. Councilwoman Benacquisto thought in all fairness, everyone should have the same opportunity to apply, and meant that as no disrespect to the people who have already applied. Councilwoman Benacquisto recommended that they advertise, have a submission period, a short window of acceptance, close the nominations and make a decision at the next Council meeting.

Councilman Willhite concurred with Councilwoman Benacquisto's comments. He noted that there was a name submitted that night and he wasn't sure he had ever met the individual or recognized the name. Councilman Willhite said that he knew that the individual had previously applied and had been interested in previously being appointed. In light of that, Councilman Willhite didn't see how the seated members of Council could represent the 58,000 residents and appoint a new councilperson who he didn't even know. He said that he wasn't advocating that they undertake any type of formal process, but that people need to know what the process is if they want to be part of that. He said that Councilman Margolis had tendered his resignation, but that did not mean that everyone knows how the process works to get appointed to the Council. Councilman Willhite felt that if the residents of Wellington wanted a councilperson representing them, they should at least have more than an e-mail that is sent in at the last minute or the first one that is sent it, but that all interested parties should have equal time and opportunity and every resident should have the ability to be notified of the process. Councilman Willhite noted that such a process had not been set in place for any time that these appointments have been made. Although Vice Mayor Priore had previously been through previous appointments and that Mayor Bowen had said that they needed a Charter Amendment to do this, in the absence of that, they needed to do something. He reiterated that he didn't believe it was fair for the Council to appoint a Councilmember who has the same amount of importance as them in making decisions for the whole of the Village through an e-mail that simply says consider my name and doesn't have a resume attached.

Vice Mayor Priore said that with regard to Councilman Willhite's comments about opening this process up, he said that he had no problem in establishing a policy, but he thought that most people would be cognizant of what is going on and the fact that their Councilmember has resigned as a result of running for a higher office. Vice Mayor Priore said yes there may be a lot of people who are not aware of this, but those people are not in the political arena. He said that what the Village was

looking for were names of individuals who have expressed interest in the past, and who are currently involved with what is going on in the community, i.e., serving on a committee or being involved by way of having run a campaign. Vice Mayor Priore said that he agreed with Councilman Willhite in that he believed that they had to work on the Charter immediately. He said that he didn't like going through this process noting that he had sat on both sides of this appointment process. Vice Mayor Priore felt that there was no really good way to undertake this process because no matter what, there will always be some unhappy people. Since the Charter now states that Council has to make this appointment until it is changed, they have to make the decision and appoint someone. Vice Mayor Priore said that it didn't matter whether the appointment was made that night or if they made the appointment in two weeks. He felt that people needed to express a desire to want to be on Council. He then read an excerpt from "Leading Your Community: A Guide for Local Elected Leaders." The excerpt said that the decision to run for government and lead your community requires hard work, attention to detail, patience, responsiveness, a thick skin and a big heart, and an open mind is critical, and more importantly it requires a commitment to public service and a belief you can make a difference. Vice Mayor Priore said that is what he is looking for and noted that he took his position with those thoughts in mind. He thought that the people who had sent in their applications have shown by their efforts and involvements that they have participated by serving on the Village's standing committees or they have run for office. Vice Mayor Priore said that he was fine if the Council wanted to undertake a process, but he was only saying that he did not want to have 16 or 17 people come before them for interviews.

Councilwoman Benacquisto said that she did not want that procession of people either which she had previously stated. She noted that people had sent text message or e-mails because no one was aware of when the end of qualifying or any consideration was.

Councilman Willhite said that when people make the decision to run for office, one knows the process that the Supervisor of Elections has, and what the cut off date is. However, in this case, he didn't feel that the Council had established any qualifying time.

Vice Mayor Priore wanted to set the policy how this will occur. He said that each Councilmember will have an opportunity to review the names, will look at the applications and qualifications of the individuals, and then Council will then come to the Council meeting and someone will make a nomination. He said if that person doesn't receive enough votes, then they will move onto the second and so on. Vice Mayor Priore hoped that they would undertake the appointment process in this fashion.

Councilwoman Benacquisto said that she envisioned the same type of process.

Councilman Willhite felt that the person who is interested in applying has to make themselves available to either speak to Councilmembers on the telephone or in person. He felt that this is a 13 month appointment and they will make the same decisions as the rest of Council, and Council should have a good knowledge of that person other than just a submission of a one line sentence asking that Council consider them.

Mayor Bowen concurred with the rest of Council, but he felt that from the names that had previously been submitted, there were several which he could appoint, and that he wouldn't have to look any further. However, he was fine if that was the process Council wanted to undertake.

Mr. Schofield informed Council that they could advertise the opening on Council on the web site as well as on Channel 18. He said that he will also post it in the local newspaper this weekend and will set the deadline for the response date to be no later than 5:00 p.m. on Tuesday, January 20, 2009 this way they will have time to add it on to the Agenda. Mr. Kurtz said that they wouldn't be setting

any requirements as to what information the interested party had to submit, but only what that person felt was appropriate to submit.

Vice Mayor Priore asked Mr. Kurtz if the Councilmembers talk with these potential candidates would there be any subject matter that should not be discussed. In response, Mr. Kurtz said that Council could ask their general views on subjects or how they view things, but the interested party should not be asked how they will vote, and certainly should ask them to take on the Councilmember's positioning exchange for the appointment on any and all issues.

Council directed staff to advertise for the vacant Council seat which will be posted in the local newspaper, on the Village's web site, and Channel 18 and that all responses must be sent in to the Village no later than 5:00 p.m. on Tuesday, January 20, 2009.

9. ATTORNEY'S REPORT

Mr. Kurtz: Mr. Kurtz reported that in accordance with the Binks Forest Developer's Agreement, the Village now has to approve the interior since the Club House is completed. He explained that the method the Village will use to accomplish that is that there is a special Architectural Review Board (ARB) meeting scheduled for Wednesday, January 14, 2009 where they will go out and view the Club House. The purpose is to see if the ARB agrees that the standard that was in the Agreement has been met which requires that the Club House be substantially equivalent to the Breakers West Club House. Mr. Kurtz said that the ARB had previously seen the proposed interior so there will be a tour and a meeting on that. At that point, if the Club House passes the required standard, the Binks Forest Club House will be done as far as the Village is concerned and their obligations under the Developer's Agreement will have been met. He said that there will be no penalty imposed because even though the Village will be inspecting it in January 2009, the Village had been notified by Binks that the Club House was completed prior to the due date of December 31, 2008. Mr. Kurtz said that the only remaining obligation Binks has under the agreement is the completion of the maintenance shed. He noted that they have secured that with a bond so that project is almost done and the obligations they had with the Village under the agreement.

10. MANAGER'S REPORT & UPDATES

Mr. Schofield: Mr. Schofield presented the following report.

- The next Village Council meeting will be held in the Wellington Community Center on January 27, 2009 at 7:00 p.m.
- A renovation project at the Community Center is planned to begin on Wednesday, November 14, 2009 to refurbish the portico. The drive will be closed to traffic for the next few days.
- The Village is beginning the replacement of all of the water meters. He said that Council had reviewed the water meter project, and those change-outs will start on Wednesday, January 14, 2009. Every water meter in the Village will be changed out.
- The Father/Daughter Dance will be held on February 7, 2009. For more information, contact 791-4733.
- The Solid Waste Authority will be holding a special meeting on Wednesday, January 14, 2009 at 10:00 a.m. in their auditorium to consider the new western county landfill.

11. COUNCIL REPORTS

Mayor Bowen: Mayor Bowen said that with regard to the landfill meeting scheduled for the next day, he said that Council had adopted the Resolution stating that the Village was in favor of the original

site. He asked for Council consensus to allow him and Mr. Schofield to say that the Village stands by that resolution; however, in all cases, they opposed the landfill on SR80.

Councilwoman Benacquisto noted that she was also going to attend the meeting and will be speaking as well. Mayor Bowen asked if as a Council they could agree that they are opposed to that particular site.

Councilwoman Benacquisto stated that the Council had passed a resolution opposing the top two ranked sites. She said that their opposition had gone on record, and then they had reasserted their opposition to the top two sites. She questioned why the Council would now change their position. She noted that a petition has been circulating for the past 9 days, and they already have almost 500 signatures from residents of this community who oppose both of those sites. As such, Councilwoman Benacquisto said that she would not support Council now saying that they oppose just the one site.

Mayor Bowen said that his concern is if it is going to come down to two or three sites, he thought the site on SR80 is a terrible site as an entrance to the Glades. He said that he still felt that the first sight was the right choice.

Councilman Willhite said that to follow-up with Councilwoman Benacquisto's concern, if the Mayor was only going say the Village is opposed to the one site, they have as a body passed a resolution saying that they opposed to two sites. He thought that it would be fine if Mayor Bowen wanted to reiterate the resolution that they had passed, and what they have done as a Village Council.

Mayor Bowen said that he was concerned that they are down to just the two sites and this one is absolutely the wrong one. Councilwoman Benacquisto said that they are actually considering three sites and they own one already. She stated that she would not agree to Mayor Bowen saying that the Village just opposes the one site as she didn't feel it was right to change course at this time. Councilwoman Benacquisto believed that they have to send a message that the Solid Waste Authority hasn't involved the Village or the residents, and they oppose the way that the process has unfolded.

Mr. Kurtz said that in passing, Mr. Schofield had mentioned to him that a bus had been secured to take residents to the hearing which he was paying for. He said that if Mr. Schofield had asked him about it, he would have told him that in his opinion in light of the Council's previous resolutions and indication to oppose the landfill site that would have been an appropriate expenditure for the Village to incur. Mr. Kurtz thought it was appropriate and is legally justified, if Council would authorize the reimbursement of those expenditures for the bus to Mr. Schofield.

Vice Mayor Priore asked if there were a number of people coming from outside of Wellington, i.e., Acreage. He thought that perhaps since the bus was being provided by the Village to take their residents to the meeting that those other communities might want to share in the cost of the bus. Councilwoman Benacquisto said that she wasn't sure if residents outside of Wellington will be on the bus. Mr. Schofield explained that the suggestion for the bus came from a meeting of Wellington residents. He said that at the time he was discussing it with them; he realized that the Village did not have the funds to pay for it, and he did not feel this was a Village check that he was going to write on his own.

Vice Mayor Priore said that he always says be careful what we ask for because what we ask for may not always be what is being offered. He said that if the Village says they don't like it, which they should because Southern Blvd is totally inappropriate for the site, they need to have a thought as to where they will say yes to the landfill. Vice Mayor Priore said that the Village should go to the meeting saying that they would like to look at specific alternatives.

Councilwoman Benacquisto said that as many meetings as she has attended with people from the Solid Waste Authority, with Mr. Schofield, with the County Commissioners and with anyone she met with, residents understand that the landfill has to go somewhere, but there are some sites that are more objectionable than others. She said that they have advocated for allowing the affected municipalities and the residents to be part of the process which didn't happen. Councilwoman Benacquisto said that the Solid Waste Authority assured them that they were going to have public meetings in the region over the summer which never happened. She said that they even called a special meeting for which the Village was not notified, and only found out about it accidentally. Councilwoman Benacquisto said that they have been very proactive as a city trying to find a solution that would work and talk about mitigating environmental concerns.

Vice Mayor Priore asked whether the Commissioner has been spoken to so that he is aware of the Village's opposition to this. Councilwoman Benacquisto responded affirmatively. She said that the Commissioner's statement to her was "Let's hear from the people" which is how the petition came about. Mayor Bowen added that the Commissioner advised him that everything is still on the table.

Vice Mayor Priore said that the first site that they talked about was frowned upon because of its proximity; yet the 45th Street site has now been declared a bird sanctuary. He concurred and supports 100% that it should not be on Southern Blvd.

Mayor Bowen felt that Solid Waste will probably need to reconsider the site after the meeting on Wednesday. He further noted that the Solid Waste Authority did not do a good job in educating the people because most people do not know what it is intended to be.

Council consensus was that the Mayor could speak at the meeting on the resolution that was passed by Council.

Council consensus was to reimburse Mr. Schofield for the cost of the bus.

Councilwoman Benacquisto: No Report.

Vice Mayor Priore: Vice Mayor Priore said that a letter had been received from a resident concerning the curfew issue, and he asked for a status report on that. Mr. Schofield explained that Mr. Bonde and Captain Richter were working on that. He said that there are some very stringent limitations on curfews which Mr. Bonde would further explain.

Mr. Bonde said that he did not have an opportunity to talk with Mr. Kurtz with regard to some opinions that came from the Supreme Court of the State of Florida. He said that there is a particular opinion called "JP vs. State of Florida" which basically struck down most curfew ordinances in the state. He said it was an interesting opinion which held up in the Federal Circuit Court. Mr. Bonde said that they are analyzing the reason for that. He noted that the opinion didn't say that you couldn't have a curfew, but it laid out some very specific and restrictive conditions under which you could possibly do it. Mr. Kurtz said that he wasn't sure whether or not the Village could qualify. In the Supreme Court opinion, and in his opinion, it made it such that they would strike down any such curfew ordinance. Mr. Bonde said that he is putting together a transmittal which he hoped to forward to Council by the end of the week after Mr. Kurtz has had an opportunity to review it.

Vice Mayor Priore asked Mr. Bonde to respond to the resident's letter. Mr. Bonde said that his letter is actually in response to that letter and is addressed to her, but he did plan on sending a transmittal to Council with some additional back referencing the details.

Councilman Willhite: Councilman Willhite extended his condolences to Ms. Bradford's family on the recent passing of Susan Bradford and son, Alex. He noted that she was a well-known artist who also had a project that came before the Council.

Councilman Willhite thanked people for their recent kind words and comments on the recent birth of his son. He congratulated his wife, and was thankful that he had another healthy child and that his wife was doing fine.

Councilman Willhite commented on the letter Mayor Bowen had addressed to Council regarding Palm Beach Community College. Councilman Willhite pointed out that he has stood firmly on one position since the beginning of the Palm Beach Community College project. He stated that he has always been skeptical of the project which is why he has wanted answers to the questions that were raised. Councilman Willhite said that if he runs for re-election, he will be able to stand on his laurels with the decisions that he made while on Council, and he hoped that those decisions were made for the best of the residents. In doing that, he felt that he was doing his due diligence in trying to find answers to the unanswered questions. Councilman Willhite said that Mayor Bowen had questioned the questions raised by quite a few residents as well as those by Council regarding the cost of things. He felt that Mayor Bowen was himself speculating on the economic impact of this project at \$10 million. Councilman Willhite said that the Village has asked the College for their economic impact analysis since the inception of this project, but to date has not been received. He said that he has been advised that the Village could pay \$10,000 to \$20,000 to do its own economic analysis; however, he felt that the burden was on the College because they want to use land in the Village that the residents own and which they are still paying on. Councilman Willhite further expressed concern that the Village staff sought Bond Counsel to question the bonds back in April or May. He noted that staff had received a response back from the Bond Counsel yet Council was never informed of that. He felt that there is a lot of information going around as well as things being talked about. Councilman Willhite did not think that it was unreasonable for Council to want to make the correct decisions which was just evidenced by what they had done regarding the vacant Council Seat by advising the residents of the process. He said that he knows the process which is to have Council ask the questions, obtain the right answers and to make the most educated and open decision. Councilman Willhite did not believe that transmitting his questions to the Manager, to each member of Council and forwarding them to the College concerning questions he didn't have answers to was inappropriate. He felt that he was just doing his work as a Councilmember, and that it is appropriate for each Councilmember to obtain the answers to their questions. Councilman Willhite apologized if not making a decision in nine months is not timely enough, but that he didn't feel that this was something he could make a rash decision on. He believed that taking into account the state of the economy, the different entities involved, the different lawyers, etc., taking nine months or longer is not unreasonable. Councilman Willhite said that he will make his decision based upon the answers that he receives. He thought that the Mayor's letter was a little abrasive to the other Council members something which the other Council members did not do to each other. He thought that Council only asked open-ended questions, and were seeking the right answers; however, it appeared the Mayor was not happy with the Council's questions. Councilman Willhite said that this is what a democracy is about, and that is what Council is there for. He said that he appreciated Mayor Bowen's comments, but Councilman Willhite felt that the onus was on him to obtain answers to the questions, and to allow the public to know that he is doing the due diligence that that they requested of him.

Mayor Bowen said that he agreed with Councilman Willhite, but he hoped that his letter provided him with some places where he can find some answers. He thought that if the rest of Council wanted to do an economic study, appraisal or any thing else, all they would have to do is to bring it up for Council to vote on. Mayor Bowen said that he was telling Council that he is comfortable with what he

has done on his own, and that he would not trust the College to do an economic study. He felt that the Village needed to do the economic study independent of the College because they may be very slanted in their direction. Mayor Bowen said that he meant nothing personal by his letter. He said he just wanted to see this project moved along because it seems that it is taking them so long to get things done. Mayor Bowen said that if Council can't get the right answers to their questions, then they need to go to the right places to get them.

Councilman Willhite said that he couldn't go to the College's Board of Trustees to force them to do an economic study. He further stated that the Village conducted its own traffic study which proved that the College did not have the trips that they said they had. In addition, Councilman Willhite pointed out that Mr. Schofield had prepared an analysis of the K-Park property since it was first purchased; the Village already has spent close to \$1 million invested in staff time, costs, contract costs which are above the initial purchase price of the property. Councilman Willhite felt that the Village had a significant amount of money invested in this land. Since they still have unpaid debt in bonds, etc., he didn't feel that the onus was on the Village to keep spending the resident's tax dollars that do or don't want the project. Councilman Willhite said if Council wanted to do an appraisal, he would make that motion; however, it is not their typical practice to make motions for items that are not on the agenda. Councilman Willhite said that just as the Mayor doesn't like to hear all of the unsubstantiated numbers, he questions the Mayor's economic analysis of \$10 million. He felt that this should be put on the agenda in order for Council to get answers to their unanswered questions.

Mayor Bowen said that he has done so much research with real estate people and business people that he knows what the property is worth. He said that he never really reached a firm number because he doesn't believe it is relevant to the merits of the project. However, when he hears appraisal numbers of \$20 million, \$30 million or \$40 million, he knows that is such an outrageous amount because real estate values are lower today.

Councilwoman Benacquisto asked that Mr. Schofield put this item on the next Agenda.

Mr. Schofield said that he would be happy to put it on the next Agenda; however, he was getting a sense that there is a consensus from Council to do an appraisal.

Vice Mayor Priore said that he wanted to have the appraisal done, and he wanted to have discussions on the recommendations he outlined in his memorandum. Councilman Willhite thought that the item should be put on the Agenda for discussion purposes as well. Vice Mayor Priore didn't think that discussing this without first obtaining appraisals and numbers would be appropriate. He thought that they should first get the numbers which would then allow them to discuss it intelligently.

Councilman Willhite thought that part of the discussion was to find out what alternatives Vice Mayor Priore had for the property. He thought that the Vice Mayor's appraisal included different portions of the property. He felt that they should put this item on the Agenda so that they can discuss how the appraisal will go, what they will do, etc. Councilman Willhite thought that the discussion would also outline some of the other questions and fact finding the Council wants regarding the project.

Vice Mayor Priore said that if they will put the item on the Agenda to where they are asking for appraisals, he wanted to add that the discussion should be related to the types of appraisals and that it should be limited to that. After that, discussions and the other issues concerning the property are to be brought up subsequently.

For clarification, Mr. Schofield said that he has a request from Vice Mayor Priore as to how the appraisals would be done. Basically, there is one set of appraisals that will be done with a variation.

He asked if it would be acceptable to Council if he put out a Request for Quotations for an appraisal. Mr. Schofield asked Council If the cost should come in within his ability to write a contract, he could that or did they want to go through the appraisal process.

Vice Mayor Priore said that the cost of the appraisals have been brought up. He said that he was sure that even utilizing realtor/realtor appraisers and using comparables would be effective. He said that he didn't want the Village to spend a great deal of monies; however, they do need to know what the property is worth.

Councilwoman Benacquisto felt that the Village should get an independent analysis. Vice Mayor Priore said he was fine if they were getting an independent analysis and a number of comparable analyses.

Councilwoman Benacquisto said that she wanted to be clear as to what the Council is asking an appraisal on, i.e., entire acreage, front 5 acres, and front 25 acres.

Vice Mayor Priore said that he had requested that an appraisal be done for: (1) the total piece of the property; (2) for the front 22 acres (which includes the frontage); (3) back 45 acres; and (4) front 5 acres. Mr. Schofield said that the other part of the appraisal would be the highest and best use appraisal for the entire parcel.

Mr. Schofield said that it would be his intention to do a Request for Quotations from the appraisal firm who specifically does this.

12. CLOSING COMMENTS - None

13. PUBLIC FORUM - None

14. ADJOURNMENT

There being no further business to come before the Village Council, the meeting was adjourned at 10:10 p.m.

Approved:

Darell Bowen, Mayor

Awilda Rodriguez, Village Clerk

5. B

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: RESOLUTION R2009-18 (BLACK DIAMOND HOMEOWNERS' ASSOCIATION, INC. TRAFFIC CONTROL AGREEMENT)

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: Approval of Resolution 2009-18 approving standard traffic control agreement for Black Diamond Homeowners' Association, Inc.

EXPLANATION: Black Diamond Homeowners' Association, Inc. has requested that the Palm Beach County Sheriff's Office patrol the roads within the Black Diamond Homeowners' Association subdivision. Currently, the Sheriff's Office cannot patrol the roads and enforce traffic regulation in the Black Diamond Homeowners' Association because the roads are private.

In accordance with our policy, Black Diamond Homeowners' Association, Inc. had an engineering study conducted to ensure that all traffic markings, signals and signs were in accordance with the Manual Uniform of Traffic Control Devices (MUTCD). The study (attached) determined that traffic controls meet applicable federal, state and local standards, including the MUTCD.

Section 316.006(2), Florida Statutes, provides that the Village may exercise traffic control jurisdiction over private roads by written agreements (attached).

FISCAL IMPACT: None.

RECOMMENDATION: Staff recommends approval of Resolution R2009-18 approving an agreement for traffic control jurisdiction between the Village of Wellington and the Black Diamond Homeowners' Association, Inc.

RESOLUTION NO. R2009-18

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, APPROVING AN AGREEMENT FOR TRAFFIC CONTROL JURISDICTION BETWEEN THE VILLAGE OF WELLINGTON AND BLACK DIAMOND HOMEOWNERS' ASSOCIATION, INC. AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Black Diamond Homeowners Association, Inc. owns and/or controls the roadways within its development as private roads; and

WHEREAS, Section 316.006(2), Florida Statutes, provides that the Village may exercise traffic control jurisdiction over private roads by written agreement; and

WHEREAS, Black Diamond Homeowners' Association wishes to contract with the Village of Wellington for performance of law enforcement services and functions relating to traffic control within its boundaries in the Village of Wellington; and

WHEREAS, such agreement for law enforcement services has been prepared and is attached hereto, marked Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified.

SECTION 2. The Village Council hereby accepts and approves the Traffic Control Jurisdiction Agreement between the Village of Wellington and Black Diamond Homeowners' Association, Inc. for the roads more particularly described in Exhibit A (a copy of which shall be maintained in the offices of the Village Clerk) and hereby authorizes the Mayor and Village Clerk to execute the Agreement.

SECTION 3. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this ____ day of February, 2009.

ATTEST:

VILLAGE OF WELLINGTON, FLORIDA

BY: _____
Awilda Rodriguez, Village Clerk

BY: _____
Darell Bowen, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: _____
Jeffrey S. Kurtz, Village Attorney



Unparalleled Property Services

BLACK DIAMOND HOA, INC.

February 11, 2009

Via Hand Delivery 02-11-09

Mr. John Bonde
Assistant Village Manager
14000 Greenbriar Blvd.
Wellington, FL 33414

Re: Black Diamond HOA – Request to be considered for PBSO Monitoring

Dear Mr. Bonde:

Please find enclosed a letter dated November 10, 2008 from Simmons and White Engineering stating that the traffic controls in Black Diamond appear to meet the applicable federal, state and local standards, including the Manual on Uniform Traffic Control Devices (MUTCD), in addition to compliance with State Statutes and Village regulations.

Also enclosed is the Agreement for Traffic Control Jurisdiction between the Village of Wellington and Black Diamond Homeowners' Association, Inc. along with the Affidavit of Ownership, both signed by Monica Bannon, as President of Black Diamond.

Therefore, please accept this letter as our request to be considered at the hearing on February 24, 2009 for Palm Beach County Sheriff's Office monitoring of our Community.

Sincerely,

Diane P Solo, Property Manager
On behalf of the Board of Directors
Black Diamond HOA

Corporate Headquarters
12270 S.W. 3rd Street, Suite 200
Plantation, FL 33325-2811
TEL: (954) 792-6000
FAX: (954) 792-6928

Mailing Address
P.O. Box 559009
Ft. Lauderdale, FL 33355-9009

Palm Beach Office
15200 Jog Road, Suite 205
Delray Beach, FL 33446
TEL: (561) 276-4500
FAX: (561) 792-6264



November 10, 2008

Black Diamond HOA
10261 Old Hammock Way
Wellington, Florida 33414

Reference: Traffic Control Survey
Village of Wellington, Florida

Ladies and Gentlemen:

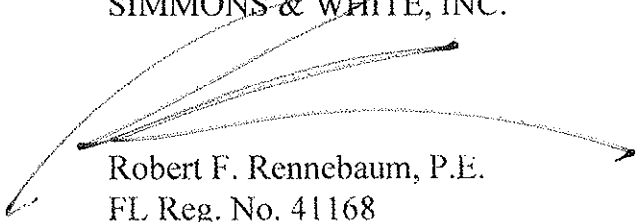
Simmons & White, Inc. has completed our review of the traffic control features in the Black Diamond community which is located west of SR-7 along Old Hammock Way in the Village of Wellington, Florida.

The observed traffic controls appear to meet the applicable federal, state and local standards for traffic controls, including the Manual on Uniform Traffic Control Devices (MUTCD). Specifically, the signs are in accordance with the applicable requirements regarding height, reflectivity, and location. In addition the 30 MPH posted speed limit is consistent with the State Statutes and Village regulations as well as the roadway geometrics.

If you should have any further questions in regard to this matter, please do not hesitate to contact me.

Sincerely,

SIMMONS & WHITE, INC.



Robert F. Rennebaum, P.E.
FL Reg. No. 41168

RFR/ah: x:/docs/misc/tr/rennebaum07096.surveycertword

**AGREEMENT FOR TRAFFIC CONTROL JURISDICTION
BETWEEN THE VILLAGE OF WELLINGTON
AND
BLACK DIAMOND HOMEOWNERS ASSOCIATION, INC.**

THIS AGREEMENT is made and entered into this _____ day of February 2009, between the VILLAGE OF WELLINGTON, a Florida municipal corporation, hereinafter "VOW", and BLACK DIAMOND HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, representing a private residential community located in Palm Beach County, Florida, hereinafter "Community".

WITNESSETH:

WHEREAS, Community owns and/or controls the roadways within its development as private roads; and

WHEREAS, Section 316.006(2), Florida Statutes, provides that VOW may exercise traffic control jurisdiction over private roads by written agreement; and

WHEREAS, Community wishes to contract with VOW for performance of law enforcement services and functions relating to traffic control within its boundaries in the Village of Wellington, Florida.

NOW, THEREFORE, in consideration of the mutual representations, terms and covenants contained herein, the parties hereto agree as follows:

1. The above recitations are true and correct and incorporated herein.
2. Community desires to have the Sheriff and his deputies control traffic upon its roadways during normal patrol hours (hereinafter "Services"). Community acknowledges that this Agreement does not guarantee a minimum number of hours of traffic enforcement. Community agrees that if the provision of traffic enforcement services under this Agreement results in additional expenses to the Village of Wellington, then Community shall be responsible for such additional expenses. Should Community desire deputies to be situated in its development at times outside normal routine patrol, Community understands that a separate contract shall be executed for additional services, and Community will be invoiced for such additional services.
3. Community shall provide VOW Village Engineer with certification by a licensed engineer (Exhibit "A") that the roadway signage and stripping is in accordance with the standards set forth in the Manual on Uniform Traffic Control Devices and Chapter 316, Florida Statutes. In addition, Community shall provide an affidavit stating that Community does in fact own/or control the roadways within said development (Exhibit "B").

4. VOW and Sheriff shall exercise authority in Community's geographical area pursuant to this Agreement and granted by the laws of the State of Florida.
5. The rendition of Services, standards of performance, discipline and other matters incident to the performance of such Services (hereinafter "Operational Matters"), and the control of personnel employed shall be within the sole discretion of the Sheriff.
6. Persons employed in the performance of Services provided are appointees of the Sheriff and not VOW. As appointees of the Sheriff, they receive all benefits, training and promotion opportunities provided by the Sheriff.
7. This Agreement may be cancelled by the VOW or Community for any reason after sixty (60) days written notice has been provided to the other party, with a copy to the Sheriff.
8. This Agreement is subject to modification in writing by the mutual consent of the parties to this Agreement and executed with the same formality as the original Agreement.
9. All notices and/or inquiries required or allowed by this Agreement shall be delivered in person or mailed by Certified Mail, Return Receipt Requested, with sufficient postage affixed, to the party to whom such notice is to be given. Such mailed notices shall be deemed received three (3) business days following the notices being placed in the U.S. Mail. Notices are to be to the following:

As to the activities of VOW and the Community:

VILLAGE OF WELLINGTON
Village of Wellington Manager's Office
Attention: Paul Schofield, Village Manager
14000 Greenbriar Boulevard
Wellington, FL 33414

COMMUNITY
Black Diamond Homeowners Association, Inc.
Attention: Board President
10261 Old Hammock Way
Wellington, FL 33414
(561) 792-9381

As to contract administration of the Operational Matters under this Agreement:

SHERIFF
Palm Beach County Sheriff's Office
Attention: Commander of Wellington District
12794 W Forest Hill Blvd.
Wellington, FL 33414
(516) 753-8547

10. The exercise of the traffic enforcement jurisdiction provided herein shall be in addition to the jurisdictional authority presently exercised by VOW and Sheriff under the law, and nothing in this Agreement shall be construed to limit or remove any jurisdictional authority.
11. The parties to this Agreement and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other party. Further, nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to Sections 768.28, Florida Statutes.
12. The parties acknowledge that they have consulted with Sheriff.
13. In the event that any section, paragraph, sentence, clause or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement, and the same shall remain in full force and effect.
14. This Agreement represents the entire understanding between the parties and supersedes all other negotiations, representations or agreement, written or oral, relating to this Agreement.
15. This Agreement shall not be construed by and governed by the laws of the State of Florida.
16. Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective parties.

(The remainder of this page left intentionally blank)

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the date and year written above.

ATTEST:

BLACK DIAMOND HOMEOWNERS
ASSOCIATIONM INC.:

By: *Heidi A. Salo*

By: *Monica Bannon*
MONICA BANNON

Typed or Printed Name

BD. PRESIDENT
Title

ATTEST:

VILLAGE OF WELLINGTON:

By: _____
Awilda Rodriguez, Village Clerk

By: _____
Darrell Bowen, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICENCY

By: _____
Village Attorney

AFFIDAVIT OF OWNERSHIP

BEFORE ME, the undersigned authority, personally appeared MONICA BANNON, as President of Black Diamond Homeowners' Association, Inc., who after first being duly sworn, states as follows:

1. That MONICA BANNON (hereinafter "Affiant"), is President of Black Diamond Homeowners' Association, Inc. (hereinafter "Black Diamond");
2. That Affiant as President of Black Diamond has knowledge of the facts and matters set forth herein;
3. That Black Diamond owns all the roads within the boundaries of its community as more particularly described in Exhibit "A", attached hereto and made a part hereof; and
4. This Affidavit is made for the purpose of inducing the Village of Wellington to assume all traffic and law enforcement functions within the boundaries of Black Diamond.

FURTHER AFFIANT SAYETH NAUGHT.


MONICA BANNON

STATE OF FLORIDA
COUNTY OF PALM BEACH


SUBSCRIBED, SWORN TO and acknowledged before me this 11th day of February, 2009, by MONICA BANNON, as President of Black Diamond Homeowners' Association, Inc., who:

() is personally known to me; or

(/) produced Florida DL as

identification, and who, being duly sworn, executed the foregoing instrument and acknowledged before me that she executed same.

WITNESS my hand and official seal in the County and State last aforesaid this
11th day of February, 2009.



NOTARY SIGNATURE

Kevin Bastos

Printed Name

Commission Expiration Stamp



PARCEL "A":

A PARCEL OF LAND BEING A PART OF TRACT 1, BLOCK 18, PALM BEACH FARMS COMPANY PLAT NO 3, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 45, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, AND AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID TRACT 1; THENCE SOUTH 01 DEGREES 57 MINUTES 36 SECONDS WEST ALONG THE EAST LINE OF SAID TRACT 1, A DISTANCE OF 312.20 FEET; THENCE NORTH 88 DEGREES 39 MINUTES 24 SECONDS WEST, A DISTANCE OF 44.76 FEET TO THE POINT OF BEGINNING AND THE INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF STATE ROAD NO 7, AS RECORDED IN ROAD PLAT BOOK 1, PAGES 35 THROUGH 41, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE CONTINUE NORTH 88 DEGREES 39 MINUTES 24 SECONDS WEST, A DISTANCE OF 889.19 FEET TO A POINT ON WEST LINE OF SAID TRACT 1, SAID POINT BEING 332.50 FEET SOUTH OF THE NORTHWEST CORNER OF SAID TRACT 1, AS MEASURED ALONG THE WEST LINE OF SAID TRACT 1; THENCE NORTH 00 DEGREES 48 MINUTES 24 SECONDS WEST, ALONG SAID WEST LINE, A DISTANCE OF 332.50 FEET TO SAID NORTHWEST CORNER; THENCE SOUTH 87 DEGREES 26 MINUTES 43 SECONDS EAST ALONG THE NORTH LINE OF SAID TRACT 1; A DISTANCE OF 905.30 FEET TO THE INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF SAID STATE ROAD 7; THENCE SOUTH 01 DEGREES 58 MINUTES 15 SECONDS WEST ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 313.15 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT (D.O.T. TAKING DESCRIPTION):

A PORTION OF TRACT 1, BLOCK 18 OF PALM BEACH FARMS CO. PLAT NO 3, AS RECORDED IN PLAT BOOK 2, PAGE 45, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 12, TOWNSHIP 44 SOUTH, RANGE 41 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER (NE 1/4) OF SAID SECTION 12; THENCE SOUTH 87 DEGREES 53 MINUTES 59 SECONDS EAST, ALONG THE NORTH LINE OF SAID SECTION 12, A DISTANCE OF 808.356 METERS (2652.09 FEET) TO THE NORTHEAST CORNER OF SAID SECTION 12; THENCE SOUTH 88 DEGREES 21 MINUTES 33 SECONDS EAST ALONG A LINE AT RIGHT ANGLES TO THE BASELINE OF SURVEY OF SAID SECTION 12; THENCE SOUTH 88 DEGREES 21 MINUTES 33 SECONDS EAST ALONG A LINE AT RIGHT ANGLES TO THE BASELINE OF SURVEY; THENCE SOUTH 01 DEGREES 38 MINUTES 27 SECONDS WEST ALONG SAID BASELINE OF SURVEY, A DISTANCE OF 5.620 METERS (18.44 FEET); THENCE NORTH 88 DEGREES 21 MINUTES 33 SECONDS WEST ALONG A LINE AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 73.153 METERS (240.00 FEET) TO THE POINT OF BEGINNING; THENCE SOUTH 01 DEGREES 38 MINUTES 27 SECONDS WEST, A DISTANCE OF 94.324 METERS (309.46 FEET); THENCE SOUTH 01 DEGREES 38 MINUTES 26 SECONDS WEST, A DISTANCE OF 2.196 METERS (7.21 FEET); THENCE SOUTH 89 DEGREES 12 MINUTES 02 SECONDS EAST A DISTANCE OF 50.299 METERS (165.02 FEET) TO A POINT ON THE WESTERLY EXISTING RIGHT-OF-WAY LINE FOR SAID STATE ROAD 7 (US 441); THENCE NORTH 01 DEGREES 38 MINUTES 26 SECONDS EAST, ALONG SAID WESTERLY EXISTING RIGHT-OF-WAY LINE, A DISTANCE OF 1.458 METERS (4.782 FEET); THENCE NORTH 01 DEGREES 38 MINUTES 27 SECONDS EAST, CONTINUING ALONG SAID WESTERLY EXISTING RIGHT-OF-WAY LINE A DISTANCE OF 93.998 METERS (308.39 FEET); THENCE NORTH 87 DEGREES 59 MINUTES 16 SECONDS WEST, A DISTANCE OF 50.295 METERS (165.01 FEET) TO THE POINT OF BEGINNING.

TOGETHER WITH PARCEL "B":

THAT PORTION OF THE PLATTED ROADWAY RESERVATION ADJOINING AND IMMEDIATELY NORTH OF TRACT 1, OF SAID BLOCK 18, LYING EAST OF THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD 7 (US 441) AS SAID WESTERLY RIGHT-OF-WAY LINE AS SHOWN ON THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, STATE PROJECT NO 93210-2519 W.P.I. NO. 4118229, SHEETS 17 AND 18 OF 28 DATED APRIL 24, 1995.

TOGETHER WITH PARCEL "C":

BEING ALL OF TRACT 2 AND TRACT 3, BLOCK 18, THE PALM BEACH FARMS CO. PLAT NO. 3, AS RECORDED IN PLAT BOOK 2, PAGE 45 THROUGH 54, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH PARCEL "D":

THAT PORTION OF THE PLATTED ROADWAY RESERVATIONS ADJOINING AND IMMEDIATELY NORTH OF TRACT 2 AND TRACT 3, OF SAID BLOCK 18, AND ADJOINING AND IMMEDIATELY WEST OF TRACT 3, OF SAID BLOCK 18.

TOGETHER WITH PARCEL "E":

BEING A PARCEL OF LAND IN SECTIONS 1 AND 12, TOWNSHIP 44 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTHWEST ONE-QUARTER (N.W. 1/4) OF SECTION 12, TOWNSHIP 44 SOUTH, RANGE 41 EAST; LESS AND EXCEPT THE EAST 80 FEET OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 12, TOWNSHIP 44 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH:

THE SOUTH 628.23 FEET OF THE SOUTHWEST ONE QUARTER (SW 1/4) OF SECTION 1, TOWNSHIP 44 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA.

EXCEPTING THEREFROM:

THE EAST 40 FEET OF THE SOUTH 628.23 FEET OF SAID SOUTHWEST ONE-QUARTER (SW 1/4) OF SECTION 1, AS CONVEYED TO THE LAKE WORTH DRAINAGE DISTRICT BY QUIT CLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 937, PAGE 378, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH PARCEL "F":

THE SOUTH 60 FEET OF THE EAST HALF (E 1/2) OF SECTION 1, TOWNSHIP 44 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA LESS THAT PORTION LYING EAST OF THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD 7 (US 441) AS SAID WESTERLY RIGHT-OF-WAY LINE IS SHOWN ON THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, STATE PROJECT NO. 93210-2519 W.P.I. NO. 4118229, SHEETS 17 AND 18, OF 28, DATED APRIL 24, 1995.

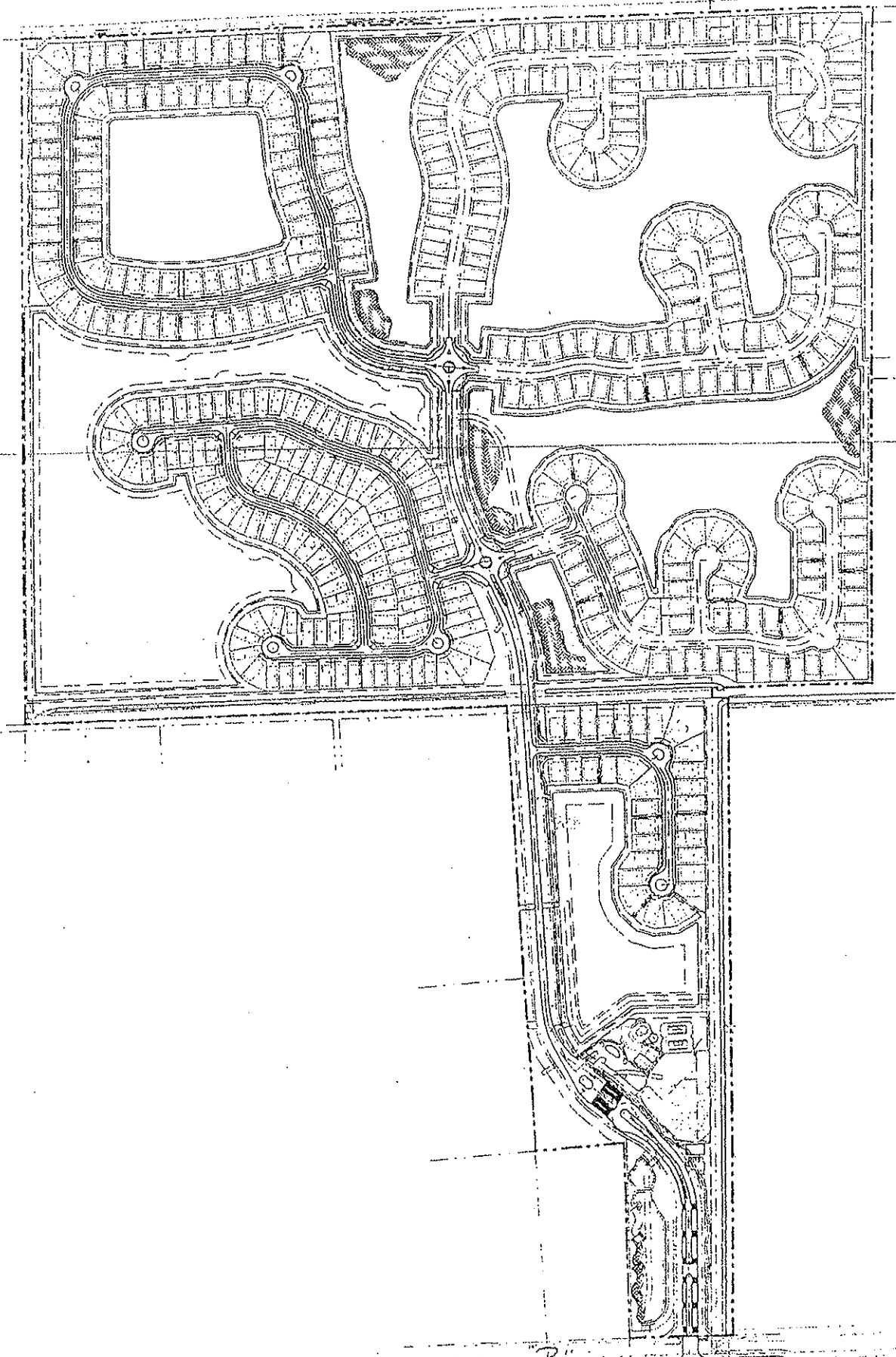
TOGETHER WITH PARCEL "G":

THE EAST 80 FEET OF THE NORTHWEST QUARTER (N.W. 1/4) OF SECTION 12, TOWNSHIP 44 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA.

CONTAINING 10,337,246 SQUARE FEET OR 237.3105 ACRES, MORE OR LESS.

EXHIBIT "A"

SITE PLAN



5. C

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: RESOLUTION 2009-19 (WELLINGTON MALL LEASE)

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: Approve execution of the attached lease at the Wellington Mall located at 12794 Forest Hill Boulevard, Wellington, FL 33414.

EXPLANATION: Execute a lease with the owner of the Wellington Mall for the following:

- 1) Two (2) additional year lease for space currently occupied by the Planning, Zoning and Building Department to commence on April 1, 2009; and
- 2) Five (5) additional years for the space occupied by Palm Beach Sheriff Office to commence on April 1, 2009.

FISCAL IMPACT: The term of the Planning, Zoning and Building (PZB) lease is two (2) years at a rate of \$9,000.87 per month; this is budgeted in the PZB fund and represents an annual savings of approximately \$46,600 (or \$23,300 for the remainder of FY 2009.)

The term of the Palm Beach Sheriff Office (PBSO) lease is five (5) years at a rate of \$4,867.67 per month; this is budgeted under Law Enforcement.

RECOMMENDATION: Execute a lease with the owner of the Wellington Mall for the following:

- 1) Two (2) additional year lease for space currently occupied by the Planning, Zoning and Building Department; and
- 2) Five (5) additional years for the space occupied by Palm Beach Sheriff Office

Staff recommends approval to execute the lease for the two offices.

RESOLUTION NO. R2009-19

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA APPROVING AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE AGREEMENTS BETWEEN THE VILLAGE OF WELLINGTON, AND WELLINGTON MALL, LIMITED PARTNERSHIP; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Village has been renting office space for the Zoning, and Building Department, and for the Sheriff's Office from Wellington Mall, Limited Partnership; and

WHEREAS, the Village's lease is scheduled to end on March 31, 2009; and

WHEREAS, Village desires to lease from Wellington Mall Limited Partnership office space for its Building and Planning and Zoning operation for a two year period of time; and

WHEREAS, the Village desires to lease from Wellington Mall, Limited Partnership office space for a five year period of time for the Sheriff's Sub-Station; and

WHEREAS, the Village Staff recommends approval of the attached leases as set forth in, Exhibits "A" and "B".

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified as true and correct.

SECTION 2. The Village Council hereby approves the Lease Agreements between the Village of Wellington and Wellington Mall, Limited Partnership (attached hereto as Exhibits "A" and "B") and authorizes the Mayor and Village Clerk to execute said Leases on behalf of the Village of Wellington.

SECTION 3. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this _____ day of February, 2009.

ATTEST:

VILLAGE OF WELLINGTON

By: _____
Awilda Rodriguez, Village Clerk

By: _____
Darell Bowen, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
Jeffrey S. Kurtz, Village Attorney

LEASE AGREEMENT

THIS LEASE dated February ___, 2009, by and between WELLINGTON MALL, LIMITED PARTNERSHIP, having an address of 675 Royal Palm Beach Blvd., Royal Palm Beach, FL 33411 (the "Landlord") and VILLAGE OF WELLINGTON, having an address of 14000 Greenbriar Blvd., Wellington, FL 33414, and a tax identification number of 65-0645105 (the "Tenant"). In consideration of the rents to be paid by the Tenant and agreements hereinafter provided to be performed by the parties hereto, Landlord leases to Tenant, and Tenant accepts and rents from Landlord, the Premises hereinafter described, for the period, at the rental and upon the terms and conditions hereinafter set forth.

ARTICLE I LEASED PREMISES

Section 1.01 - Leased Premises. Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the following described Premises (the "Premises"), situated in the City of Wellington, County of Palm Beach, State of Florida: The space known as **12794 W. Forest Hill Blvd., Unit 23, Wellington, FL 33414**, which for purposes of this Lease, the parties agree contains approximately **Seven Thousand Five Hundred (7,500) square feet** of floor space, located in the Wellington Mall (the "Mall"). Frontage of the leased Premises shall be measured from center of partition to center of partition except that if the leased Premises or any part of it is an end space, the measurement shall include the full width of end walls; and depth of the leased Premises shall be measured from the exterior faces of the walls (outside dimensions). In computing the gross leasable area within the leased Premises no deduction or exclusion shall be made from areas or space otherwise computed by reason of stairs, interior partitions, mezzanines, or other interior construction or equipment. Provided that, in the event that during the term hereof either party conclusively establishes that the Premises contains square footage different than the above stated amount, then an appropriate adjustment will be made in fixed minimum rent and additional rents in accordance with the actual square footage. Such adjustment shall be prospective only, and not retrospective.

Section 1.02 - Use of Additional Areas. The use of and occupation by Tenant of the Premises shall include the non-exclusive use in common with others entitled thereto of the common areas of the Mall including parking areas, driveways, service roads, loading facilities and sidewalks; subject, however, to the terms and conditions of this Agreement and to the rules and regulations for the use thereof as prescribed from time to time by Landlord.

Section 1.03 - Use of Premises. Tenant shall continuously occupy and use the Premises exclusively for Village of Wellington governmental offices (Planning, Zoning, Building, Code Enforcement) and for no other purpose whatsoever. Tenant further covenants and agrees to promptly comply with all statutes, ordinances, rules, orders, regulations and requirements of federal, state, county and city governments regulating the use by Tenant of the Premises. The restrictions set forth in this paragraph shall extend to all agents and employees of the Tenant.

ARTICLE II TERM OF LEASE AND COMMENCEMENT

Section 2.01 - Term of Lease. The term of this lease is two (2) years, commencing on April 1, 2009 ("Lease Commencement Date"), and expiring at midnight on March 31, 2011 (the "Term"), unless sooner terminated pursuant to any provision hereof.

Section 2.02 - Rent Commencement Date. The "Rent Commencement Date" shall be April 1, 2009.

ARTICLE III RENT

Section 3.01 - Payment of Rent. Tenant agrees to pay to Landlord, at the above specified address of Landlord or such other place as may from time to time be designated by Landlord, without prior demand and without any set off or deduction whatsoever, "Fixed Minimum Rent" and "Additional Rents" as hereinafter provided. The payment of rent shall begin on the Rent Commencement Date. In the event the Rent Commencement Date occurs on a day other than the first day of a month, Tenant shall pay rent for the fractional month on a per them basis (calculated on the basis of a thirty-day month) until the first day of the month following the Rent Commencement Date, and thereafter, the fixed minimum rent and additional rent shall be paid in equal monthly installments on the first day of each and every month in advance.

In the event Tenant fails to pay any installment of rent, including any amount treated as an Additional Rent hereunder, or other sums hereunder as and when such installment or other charge is due, Tenant shall pay to Landlord, on demand, a late charge in an amount equal to ten percent (10%) of such installment or other charge overdue in any month and ten (10%) percent each month thereafter until paid in full to help defray the additional cost to Landlord for processing such late payments, and such late charge shall be considered additional rent hereunder and the failure to pay such late charge within ten (10) days after demand therefor shall be an additional event of default hereunder. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law, and shall not limit Landlord's remedies in any manner. In the event any payment by Tenant's check is dishonored by the bank, all future payments must be made in the form of certified funds.

Section 3.02 - Fixed Minimum Rent.

A. The Tenant agrees to pay to the Landlord as fixed minimum rent, the sum of Nine Thousand and 87/100 (\$9,000.87) Dollars per month.

B. Upon executing this Agreement, Tenant agrees to pay to the Landlord the following sums:

First month's rent of \$9,000.87;

Security deposit of \$1,697.50 received from prior lease (amount now due = \$0.00)

C. The fixed minimum rental required to be paid by the Tenant shall be adjusted on the anniversary of the Rent Commencement Date each calendar year (the "Rent Adjustment Date"). The rent adjustment shall be an additional Three (3%) Percent annually.

ARTICLE IV COMMON AREAS

A. The Common Area shall be subject to the exclusive control and management of Landlord and Landlord shall have, and hereby reserves, the unrestricted right to close any or all portions of the Common Area to such extent as may, in the opinion of Landlord, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or to the public therein or to close temporarily, if necessary in Landlord's judgment, all or any part of the parking areas in order to discourage non-customer parking. All space, areas and facilities in the Center not within the Premises, which Tenant may be permitted to use and/or occupy are to be used and/or occupied under a revocable and non-exclusive license and if such license shall be revoked, or if the amount, size or configuration of such space, areas and/or facilities shall be diminished or changed, this Lease shall remain in full force and effect and Landlord shall not be subject to any liability, nor shall Tenant be entitled to any compensation or reduction of rent, nor shall such revocation, change or

diminution be deemed constructive or actual eviction. The Common Area shall be subject to such rules and regulations as Landlord may, from time to time, adopt and Landlord expressly reserves the unrestricted right at any time to make changes, additions, deletions, alterations and/or improvements in and to the Common Area including changing its layout, adding to or subtracting from its shape and size, altering its locations, erecting thereon store buildings or other structures or improvements of any land and adding extensions to buildings or other structures or improvements of any kind thereon.

B. Landlord agrees to maintain the Common Area in reasonably good repair and reasonably clear of debris, lighted when necessary and open during each business day. Also, Landlord agrees to keep any enclosed mall areas lighted when necessary and maintained at a comfortable temperature during the normal business hours set by Landlord. Tenant shall be primarily responsible for maintaining the common area directly in front of or adjacent to the Premises in a clean condition and clear of any debris and shall be responsible for immediately notifying the Landlord in writing of any need for repairs or other maintenance in common areas in front of or adjacent to the Premises.

C. Landlord reserves the right, from time to time, to utilize portions of the Common Area (including common mall area, if applicable) for outdoor shows, display, automobile and other product shows, business promotions, the leasing of kiosks or sales space, or such other uses which, in Landlord's sole judgment, tend to attract the public. Further, Landlord reserves the right to utilize the lighting standards and other areas in the parking lot (and common mall area, if applicable) for advertising purposes and to additionally designate one or more parking areas for employee parking. **Tenant shall cause its employees to park only in such designated area(s)** or, if none shall be designated, then only in the outer areas of the parking lot.

D. Landlord grants to Tenant, during the Term, a non-exclusive license to use the Common Area as from time-to-time constituted. Such use will be in common with Landlord, Landlord's tenants, occupants in the Center and the respective parties' employees, agents, licensees, contractors, customers and other invitees.

ARTICLE V LANDLORD'S RIGHTS TO ACCESS AND ALTERATION

Section 5.01 - Access. Landlord or its agents will have the right to enter the Premises at all times to examine the Premises, to show them to prospective lenders, purchasers or Tenants of the Center and/or to make such repairs, replacements, alterations, improvements or additions as Landlord may deem necessary or desirable, all without any abatement of rent or additional rent and without the same constituting an eviction of Tenant in whole or in part. Without limiting the foregoing, Landlord reserves the right (but will not be obligated) to at any times(s) to install, maintain, use, repair and replace pipes, duct work, conduits, utility lines and wires installed in and through ceiling space and partitions, in or beneath the floor slab or above or below the Premises or other parts of the building. Landlord shall attempt to give Tenant reasonable advance notice of its exercise of such right except in the event of matters deemed by the Landlord to potentially constitute an emergency or hazard. During the six (6) months prior to the expiration of the Term, Landlord and its agents may enter the Premises and place upon the Premises the usual "For Rent" or similar notices, which notices Tenant will permit to remain without molestation. Said right of entry will likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions which do not conform to this Lease. If Tenant or Tenant's agent is not personally present to open and permit an entry into the Premises, at any time when for any reason an entry therein is necessary or permissible, Landlord or its agents may enter without rendering Landlord or its agents liable therefor and without in any manner affecting Tenant's obligations and liabilities under this lease. Nothing herein contained will impose on Landlord or its agents any obligation, responsibility or liability for the care, maintenance or repair of the building or any part thereof (including the Premises), except as otherwise specifically provided in this Lease.

Section 5.02 - Landlord's Alteration. Landlord will have the absolute right to make changes of any kind or

nature in, upon and above Landlord's property, such as (without limitation) constructing additions to or otherwise altering the building and altering the facade of the building at which the Premises are a part, and in connection therewith to do all things which Landlord deems necessary or desirable, without liability to Tenant and without affecting Tenant's monetary and other obligations hereunder. If excavation, construction or other work is to be performed on Landlord's property and/or adjacent land, in furtherance thereof Landlord or its designees may enter upon Landlord's property, including the Premises, and take such action as Landlord deems reasonably appropriate. Landlord is not required to do any work other than during normal business hours. Any such work will be done at such time(s) and in such manner as Landlord, in its discretion, may determine and such work may include, without limitation, at Landlord' option, the installation of new store fronts, erection and maintenance of scaffolding, bridges and/or barricades in front of the Premises and/or opening and changing the store fronts. Any such work to be done by Landlord may be done during ordinary business hours of business days without diminution, abatement or reduction in rent or any other compensation to Tenant as a result thereof. Tenant will fully cooperate with Landlord in connection with such work and will not make any claim for, nor will the same be deemed to be, constructive or actual eviction (whether partial or total).

ARTICLE VI PROPERTY IN THE PREMISES

Section 6.01 - Ownership of Personal Property. All leasehold improvements and betterments, including all light fixtures, carpeting, flooring, plumbing, sprinkler, heating and air-conditioning equipment and other construction to be done by Tenant shall, when installed, be free from any and all items therefore, attach to the freehold estate and become and remain the property of Landlord; provided, however that Landlord shall have the right to require Tenant to remove any of the improvements and betterments as provided for in Section 11.03. All readily removable trade fixtures, signs, carpeting and drapes shall remain the property of Tenant, subject at all times to Landlord's lien for rent and other sums which may become due to Landlord under this Lease.

Section 6.02 - Landlord Not Liable for Damage. Landlord shall not be liable for injury and/or damage to persons or property or for any loss suffered by Tenant or its business, regardless of how caused, arising out of, but not limited to: (a) theft; (b) fire, explosion or falling plaster; (c) water flooding or dampness from rain, leaks from roof or any part of the Premises, street or subsurface or any source whatsoever or from the bursting, overflowing or leaking of sewer lines, steam pipes or appliances or from the heating or air-conditioning systems or plumbing fixtures; (d) alterations, replacements and/or other work performed to comply with governmental or quasi-governmental requirements regarding freon, any Hazardous Materials, or otherwise; or (e) electric wires or from gas or odors or fire or other damage and/or injury caused in any manner whatsoever or (f) any other cause whatsoever unless caused by or due to the gross negligence or willful misconduct of Landlord, its agents, servants, or employees. Landlord shall not be liable for any such injury or damage caused by other tenants, persons in the Premises, occupants of adjacent property to or of the Center, or the public, or caused by operations in construction of any private, public or quasi-public work. All property of Tenant kept or stored on the Premises shall be so kept or stored at the sole risk of Tenant and upon request Tenant shall indemnify Landlord and its agents against any claims arising out of damage or loss to any such property, the indemnity herein is subject to F.S. 768.28 if arising out of negligence. Any indemnification arising out of contract herein shall be limited by the insurance of Tenant. Tenant hereby waives the right to claim and recover against Landlord for any loss or damage insurable by Tenant whether or not Tenant has such insurance in place.

ARTICLE VII
INDEMNITY, HAZARDOUS MATERIALS AND TENANT'S INSURANCE

Section 7.01 - Indemnity. Tenant agrees that it will, to the extent permitted by Florida law, indemnify Landlord and its agents against all liabilities, costs and expenses (including reasonable attorneys' fees and, if suit is brought, such fees and court costs through appeals and collection efforts) resulting from, arising out of or in any way connected with: (a) any accident or other occurrence in the Premises and/or on adjacent portions of the Common Area causing loss or injury to any person (including Landlord and Tenant and their respective agents, employees, licensees, invitees and contractors) and/or property (including the Premises); (b) the use and occupancy by Tenant and/or any third party of all or any part of the Premises or any act or omission of Tenant and/or such third party or their respective agents, employees, licensees, invitees or contractors, whether inside or outside of the Premises; (c) violation of any law or ordinance, whether occasioned by the act or omission of Tenant or those holding under or through Tenant; and (d) failure of Tenant or those holding under or through Tenant in any respect to comply with and perform all of the requirements and provisions of the Lease and related documents. Further, however, such indemnification is subject to F.S. 768.28 and Tenant's insurance coverage.

Section 7.02 - Tenant's Insurance.

A. Tenant agrees, at its expense, to procure and continue in force comprehensive general liability insurance with broad form property damage coverage, written on an "occurrence" (rather than a "claims made") basis and without any deductible, covering all claims for injuries to persons and damage to property in or upon the Premises and for adjacent areas, including all damage from signs, glass, awnings, fixtures or other appurtenances now or hereafter in or upon the Premises, and insuring the indemnity agreement contained in this Article. Such Insurance at all times shall be in the combined single limit amount of not less than \$2,000,000.00 per occurrence. All policies of insurance shall provide that Landlord shall receive at least thirty (30) days prior written notice of the change, termination or cancellation of any such insurance policy and shall name Landlord, its managing agent and designee(s) as additional insureds and loss payees. Such insurance shall be written with a company or companies acceptable to Landlord and authorized to engage in the business of general liability insurance in the State of Florida (it being understood that Landlord will not approve any company with a rating less than "A-Class XII" in the then-current edition of Best's Key Rating Guide) and there shall be delivered to Landlord customary insurance certificates, or at Landlord's option duplicates of the policy or policies, evidencing such insurance is paid in full. If Tenant fails to furnish evidence of such insurance, or if Landlord receives notice that any of Tenant's insurance has been or will be canceled, terminated, or materially changed or suspended, Tenant will be in default under this Lease and (without waiving such default) Landlord may obtain such insurance as Tenant is required to maintain hereunder and the premiums for such insurance, together with an administrative charge of \$100.00 on such amounts advanced to pay said insurance and interests at the rate of Eighteen (18%) percent per annum shall be deemed additional rent to be paid by Tenant to Landlord on request. Said administrative charge will also be payable on request and as additional rent if Landlord elects to give Tenant written notice of any actual or threatened cancellation, termination, material change or suspension of any other insurance required to be maintained by Tenant hereunder.

B. Whenever Tenant is making or having others make any installations, alterations or repairs in or to the Premises, workers' compensation and comprehensive general liability insurance with broad form property damage coverage, all in amounts and with companies satisfactory to Landlord, and naming Landlord, its managing agent and designee(s) as additional insureds and in the case of Landlord an additional loss payee, will be maintained by Tenant and its contractor(s) engaged in the performance of the work, and before proceeding with the work insurance certificates acceptable to Landlord must be furnished to Landlord.

C. If by reason of changed economic conditions (as reflected by increases to the Consumer Price Index)

or Tenant's use of the Premises Landlord determines that the insurance amount specified in Section 7.02(A) of this Article is inadequate, upon request from time to time Tenant will increase the same to such amount as Landlord may require. In the case of changed economic conditions, Landlord may request an increase in insurance coverage equal to the percentage increase in the CPI from the commencement of the Lease to the time of the request.

D. Tenant shall obtain, at Tenant's expense, and maintain in full force and effect during this Lease, a standard form policy of fire insurance with standard form of extended form policy of fire insurance with standard form of extended coverage endorsement covering the fair market value of all stock and trade, trade fixtures, interior improvements, equipment and other personal property located in the Premises. Tenant shall replace, at its sole cost and expense, any and all plate and other glass, damaged or broken from any cause whatsoever in and about the Premises. Tenant shall procure and maintain, at its own expense, insurance covering all plate and other glass damaged or broken from any cause whatsoever in and about the Premises for and in the name of Landlord. Tenant acknowledges Landlord shall have no obligation to carry insurance of any kind on Tenant's furniture, furnishings, fixtures or equipment and Landlord shall not be obligated to make any repairs thereto or to replace the same.

E. All insurance provided for in this Lease must be effected under policies in form and substance satisfactory to Landlord. Tenant will deliver to Landlord a certificate of each policy, bearing a notation evidencing payment of the premium, or accompanied by other evidence reasonably satisfactory to Landlord of such payment.

F. Tenant acknowledges that its obligation to fully and timely effect the insurance required of it hereunder and to deliver the requisite insurance certificates to Landlord is a material inducement for Landlord to enter into this Lease. Therefore, Tenant agrees that, without in any way limiting Landlord's other rights and remedies under this Lease, Tenant will not be entitled to enter, use and/or take possession of the Premises or any part thereof unless such obligations are fully complied with. However, the foregoing will not otherwise affect this Lease or the Term or Tenant's obligations hereunder, including Tenant's obligation to pay the rent and all other sums herein provided for. Without limiting (and notwithstanding) any other provision of this Lease, if at any time any of the insurance required to be maintained by Tenant hereunder is canceled and not immediately replaced with like insurance, without any hiatus in coverage, or if such insurance is not obtainable, that fact will constitute a material default under this Lease beyond the applicable grace period and without the requirement of notice from Landlord, entitling Landlord to the same rights and remedies if such default were with respect to the non-payment of the fixed minimum rent reserved herein (including termination of this Lease).

Section 7.03 - Landlord's Security Systems. From time to time Landlord may install electronically controlled/monitored security systems for the Premises. Landlord assumes no responsibility and/or liability for any loss or damage to persons or property sustained in any instance when a security system, whether installed by Landlord or Tenant, malfunctions or fails to function for any reason whatsoever, and Tenant and any party claiming under Tenant shall file no claim against Landlord because of damages sustained as a result of the failure or malfunctioning of any such security system or Landlord electing not to install such a security system. The exculpation described in this paragraph shall specifically include any loss sustained in an instance where the security system malfunctions or fails to perform due to the failure of any telephone system, electrical system or other service that may be made available to Tenant by Landlord.

Section 7.04 - No Asbestos or Hazardous Materials.

A. Tenant shall not use nor permit in, on or about the Premises any product, material, equipment or other item of any nature whatsoever which contains asbestos in any form.

B. Tenant shall not cause or permit any "Hazardous Materials" (as defined below) to be brought upon, kept or used in or about the Premises by Tenant or any subtenant or any of their respective agents, employees, contractors, licensees or invitees. Without limiting the provisions contained in Section 7.01, if Tenant breaches the obligations stated in the preceding sentence, or if the presence of any Hazardous Materials in or about the Premises caused or permitted by Tenant results in any contamination of the Premises, or if contamination of the Premises by any Hazardous Materials otherwise occurs for which Tenant is legally liable, then Tenant shall indemnify Landlord and its agents against all claims, judgments, damages, penalties, fines, costs, liabilities or losses including diminution in value of the Premises, damages arising from any adverse impact on marketing of space within the Mall, and sums paid in settlement of claims, attorneys' fees, environmental audits, consultant fees and expert fees which arise during or after the Term as a result of such breach and/or contamination. This indemnification includes, but is not limited to, costs incurred in connection with any investigation of site conditions and any clean-up, remedial, removal or restoration work required by any Landlord or governmental or quasi-governmental authority because of any Hazardous Materials being present in the soil or ground water on or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Materials on the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant shall promptly take any and all actions at its sole cost and expense as are necessary to return the Premises to their condition existing prior to the introduction of such Hazardous Materials to the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises.

As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any governmental or quasi-governmental authority; such term includes, but is not limited to, any material or substance which is (a) petroleum, (b) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (c) defined as a "hazardous waste" pursuant to Section 10004 of the Federal Resource Conservation and Recovery Act, (12 U.S.C. Section 6903), or (d) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601).

For the purpose of determining compliance with this Section, Tenant hereby grants Landlord and its agents the right to cause or conduct testing and/or examination of the Premises to be made from time to time at Tenant's sole cost and expense, payable on request and as additional rent.

Notwithstanding (and without limiting) any other provision of this Lease, a breach or default by Tenant under this Article will constitute a material default under this Lease beyond any applicable grace period and without the necessity of notice from Landlord to Tenant regarding such default, entitling Landlord to the same rights and remedies as if such default were with respect to the non-payment of the fixed minimum rent reserved herein (including termination of this Lease).

ARTICLE VIII TENANT'S WORK ON PREMISES

Section 8.01 - Mechanic's Lien. Prior to Tenant performing any construction, repairs, improvements or other work in, on or about the Premises for which a lien could be filed against the Premises, the building where the Premises are located or the Center, Tenant agrees that if requested by Landlord, Tenant shall immediately execute, acknowledge and deliver to Landlord, for recording purposes, a Memorandum of Lease, or any other document authorized or acceptable under the laws of the State of Florida, whenever enacted, containing therein language deemed necessary by Landlord to preclude the filing of mechanic's or construction liens against Landlord's interest in the Center or the Premises. Landlord and Tenant agree that Tenant will not have

the authority to create, suffer or allow to remain any lien for labor or materials on the Center or the Premises against Landlord's interest therein. All contractors, subcontractors, materialmen, mechanics, laborers and others contracting with Tenant, and/or any subtenant of Tenant and/or any other occupant(s) of the Premises for the construction, installation, alteration or repair of any improvements to the Premises are hereby charged with notice that they must look only to Tenant and to Tenant's interest in the Premise to secure the payment of any charges for work done and/or materials furnished at the Premises. Notwithstanding the foregoing, if, for any reason any mechanic's, construction, or other lien shall be filed against the Premises or any other part of the Center, purporting to be for labor or material furnished or to be furnished at the request of Tenant or anyone claiming under Tenant, then Tenant shall, at its sole cost and expense, cause such lien to be discharged of record by payment, bond or otherwise as allowed by law, within ten (10) days after the filing thereof. If Tenant shall fail to cause the lien to be discharged of record within such ten (10) day period, Tenant shall be in default under this Lease and (without waiving such default) Landlord, in addition to any other rights and remedies it may have under this Lease may, but shall not be obligated to, cause such lien to be discharged by payment, bond or otherwise, without investigation or other inquiry to the validity thereof or as to any offsets or defenses thereto, and Tenant shall, within ten (10) days after request, reimburse Landlord for all amounts paid and incurred, including attorneys' fees, and interest thereon, at the rate of eighteen percent (18%) per annum or such higher rate as may be permitted by law from the respective dates of Landlord's payments; Tenant also shall otherwise indemnify Landlord and its agents against any claim or damage resulting therefrom.

ARTICLE IX PARKING AND DELIVERIES

Section 9.01 - Parking Area.

A. Landlord shall maintain at all times during the term of this Lease the parking area of the Mall. The parking area shall be for the joint use and mutual benefit of all tenants in the Mall and their customers, employees, visitors and invitees. The parking area shall be kept in good order and repair and reasonably free of obstruction by the Landlord.

B. Landlord may designate an area in the parking area for the parking of employee's vehicles, and in such case employees of the Tenant shall be required to park their vehicles in only the designated area. Landlord shall have the right to monitor the employee parking and to enforce the requirements of this paragraph, including, without limitation, the towing of any improperly parked employee vehicles.

Section 9.02 - Deliveries. Tenant agrees that trailers and trucks shall deliver merchandise only at times and in such manner that do not interfere with operation of the Center.

ARTICLE X CONDUCT OF BUSINESS BY TENANT

Section 10.01 - Use of Premises. Tenant shall continuously occupy and use the Premises exclusively for administrative offices for the Village of Wellington and for no other purpose whatsoever.

Section 10.02 - Restrictions on Use. Tenant shall not use or permit the Premises to be used for any purpose other than as set forth above and further covenants and agrees to promptly comply with all statutes, ordinances, rules, orders, regulations and requirements of federal, state, county and city governments regulating the use by Tenant of the Premises. The restrictions set forth in this paragraph shall extend to all agents and employees of the Tenant.

ARTICLE XI MAINTENANCE AND REPAIRS

Section 11.01 - Maintenance and Repairs by Tenant.

A. Tenant shall, at its own cost and expense, keep and maintain the Premises and every part thereof in good order and repair except that portion of the Premises to be repaired by Landlord. Without limiting the foregoing, Tenant agrees to keep in good order and repair, and to maintain and replace as needed, all fixtures pertaining to heating, air conditioning (including compressors, fans and ducts), ventilation, water, sewer, electrical and sprinkler systems resulting from Tenant's misuse. Tenant shall obtain at its sole cost and expense, a service contract for repairs and maintenance of the heating and air-conditioning system for the Premises that conforms to the warranty requirements of said system. Tenant agrees to return the Premises to Landlord at the expiration or sooner termination of this Lease, in as good a condition and repair as when first received, reasonable wear and tear excepted. Following the expiration or earlier termination of this Lease and prior to return of Tenant's security deposit, an HVAC maintenance company acceptable to Landlord that states the Premises' heating, ventilation, and air conditioning systems are operating properly and have not suffered from neglect must be provided to Landlord. Failure by Tenant to (a) provide Landlord with an HVAC inspection report; and (b) for the HVAC report to state that the Premises' heating, ventilation and air conditioning systems have been damaged as a result of neglect shall permit the Landlord to allocate the security deposit to obtain the inspection report or repair or replace any damaged equipment pursuant to such report. All damage or injury to the Mall, Premises or the common areas caused by the act or negligence of Tenant, its agents employees, licenses, invitees or visitors shall be promptly repaired by Tenant at Tenant's sole cost and expense and to the satisfaction of Landlord or, at Landlord's option, repaired by Landlord at Tenant's expense. Landlord may make such repairs which are not promptly made by Tenant and charge Tenant for the cost thereof and Tenant hereby agrees to pay such amounts on demand as Addition Rent. Tenant shall, at its sole cost and expense, arrange for any necessary exterminating of insects, vermin, rodents and other pests by qualified and duly licensed professionals.

B. If Tenant refuses or neglects to properly maintain or repair the Premises as required here within a reasonable time after written demand by Landlord, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures and/or other property, or for the loss of business occasioned by reason thereof. Landlord shall not be required to give Tenant notice for those repairs reasonably deemed by Landlord to be emergency in nature. Upon completion of all repairs by Landlord pursuant to this section, Tenant shall pay within twenty (20) days after demand by Landlord, the cost of such repairs plus interest at the rate of eighteen percent (18%) per annum from the date of completion of the repairs by the Landlord until payment.

C. Tenant shall make all repairs in a good and workmanlike manner consistent with the Florida Building Code.

Section 11.02 - Maintenance and Repairs by Landlord.

A. After receipt from Tenant of written notice of the need therefore, Landlord, at its expense, will make necessary repairs to (a) all structural parts of the Premises, both exterior and interior; (b) to the extent furnished and installed by Landlord, and to the extent not serving the Premises exclusively, at its expense, all concealed water, sewer, electric and other utility lines and sprinkler systems, if any; (c) to the extent furnished and installed by Landlord and to the extent not serving the Premises exclusively at its expense, all mechanical and building equipment; and (d) the center's common areas, including lobbies, customarily used by Tenant.

B. Notwithstanding the foregoing, however, Landlord will be released of its obligation under this Paragraph if anything to be repaired by Landlord is disturbed by the acts, misuse, improper conduct, omission or neglect of Tenant, its subtenants, agents, servants, employees, contractors, invitees or licensees (collectively, for convenience "Tenant's Agents") or any improvements or changes in or to the Premises made by Tenant. Landlord will have no liability to Tenant by reason of making any repairs required or permitted to be performed by Landlord under this Lease, or required by law, provided that (except in the case of an emergency) Landlord will do the work in such manner as will not materially interrupt Tenant's business operations. However, the foregoing will not require Landlord to do any such work other than during normal business hours.

C. Landlord agrees to keep and maintain in good order and repair only the structural components of the roof, structural components and exterior walls (exclusive of all signs, doors, windows, glass and plate glass of the Premises). If the need for any such maintenance and repairs are caused in part or in whole by the act, neglect, fault or omission of duty by Tenant, its agents, servants, employees or invitees, or any damage is caused by breaking and entering, Tenant shall pay to Landlord the actual cost of such maintenance and repairs. Landlord grants to Tenant exclusive contract of the Premises and shall be under no obligation to inspect the Premises. Tenant shall at once report in writing to Landlord any known defective condition which Landlord is required to repair pursuant to this Paragraph. Tenant's failure to report to Landlord any such condition or defect shall make Tenant responsible to Landlord for any liabilities, including attorneys' fees and costs incurred by Landlord and any increase in the cost of repairs or insurance due to any failure or delay in reporting by Tenant. Except as herein provided regarding casualty loss, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Mall or the Premises or in or to fixtures contained therein. Tenant hereby waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

Section 11.03 - Alterations. Tenant will make no alterations, changes, additions or improvements in or to the Premises during the term without the written consent of Landlord, which consent Landlord may grant, condition, and/or withhold in its reasonable discretion. Landlord's prior consent will not be required for any alterations, additions or improvements (for convenience in any such case, "Alterations") in the Premises, the cost of which will not exceed Five Hundred (\$500.00) Dollars and which do not affect structural portions of the Center or Premises. Alterations in and to the Premises consented to by Landlord shall be made at Tenant's expense, and Landlord's consent shall only be forthcoming provided each of the following conditions is satisfied at Tenant's expense: (a) prior to commencement of any such work: (i) Tenant shall submit to Landlord for its approval plans and specifications in detail reasonably satisfactory to Landlord as well as a certification from Tenant's licensed contractor or architect that none of the proposed work will adversely affect the structure of the Building or its service systems (including the water, electric, heating, air conditioning and plumbing systems); (ii) Tenant will deliver to Landlord an original certificate of insurance evidencing to Landlord that Tenant and its contractors have obtained the following insurance coverage in connection with the work: single-limit comprehensive general liability in an amount not less than \$1,000,000 per occurrence, including broad form property damage coverage without deductible, written on an "occurrence" rather than a "claims made" basis; workers' compensation and employer's liability coverage covering all employees of the contractors and any subcontractors. All such insurance will be effected with insurers licensed to do business in the State of Florida and having a rating not less than "A-/Class XII" in the then-current edition of Best's Key Rating Guide. Landlord and such others as Landlord may designate will be named in each instance as additional parties insured and less payees and no change or termination of any coverage will be effective without at least thirty (30) days' prior written notice from the carrier(s) to Landlord (and the aforesaid certificate of insurance delivered to Landlord will so specify); and (iii) Tenant will deliver to Landlord copies of all requisite permits, approvals and certificates, and, upon completion, such lien waivers, satisfactions, Certificate of Occupancy or completion, and final contractor's affidavits as Landlord may request; (b) no amendments or additions to Tenant's plans and specifications will be made without Landlord's prior written

consent, which Landlord agrees will not be unreasonably withheld as to minor amendments or additions; and (c) the standards of quality, utility and appearance of the proposed alterations will conform to the then standards for the building. Tenant agrees that all of such work will be done in a good and workmanlike manner, in compliance with this Lease, the advice of all insurance bodies, and all applicable laws, ordinances, rules and regulations (including rules and regulations promulgated by Landlord) then in effect, and with the least possible disturbance to other occupants of the building. Tenant will reimburse Landlord on request as additional rent for any expenses incurred by Landlord on account of Tenant's failure to comply with any of the foregoing. Tenant will promptly pay all costs and expenses of such alterations, which immediately upon installation will become Landlord's property, and will not do or fail to do any act which may render the building, the Center, the Premises or any property in the Premises liable to any mechanic's lien or other lien chattel mortgage, conditional bill of sale, title retention agreements or other charges of any kind which may be incurred by or become chargeable against and, the building, the center, the Premises or any property in the Premises, by reason of any work done or claimed to have been done, or any materials furnished, to the Premises in connection with such alterations. At all times during the making of such alterations, Landlord will be entitled to have its representatives present on the site for super-vision and inspection purposes and such representatives will have unrestricted access to all parts of the Premises. Such presence, inspection and/or supervision, however, will not impose any obligation whatsoever on Landlord or its representatives, nor render Landlord or its representatives liable in any way for improper work or faulty materials. Tenant agrees that it will not, either directly or indirectly, use any contractors, labor or materials if such use might create difficulty with other labor then engaged by Tenant, Landlord or others in the construction, operation or maintenance of the building or the Center or any part thereof. Landlord makes no representation as to the design or feasibility of efficiency of Tenant's work, or whether Tenant will be able to obtain the required licenses, permits, approvals and certificates. If the operation of the building, the center of any of its equipment is in any way adversely affected by reason of Tenant's work, Tenant at its expense, will promptly remove the cause thereof upon Landlord's request. Additionally, Tenant shall be responsible for first obtaining all necessary approvals, consents, including, but not limited to, any governmental quasi-governmental or property owner's association approvals when applicable. All leasehold improvements and betterments, including light fixtures, heating and air-conditioning equipment and other construction to be done by Tenant shall, when installed, attach to the freehold and become and remain the property of Landlord; provided, however, that Landlord shall have the right to require Tenant to remove any such improvements and betterments. In such case, Landlord shall give notice to Tenant prior to lease termination, or within thirty (30) days thereafter, to remove the subject items. Tenant shall promptly do so, at its sole cost and expense, and repair any damage caused by such removal. If Tenant fails to do so, then Landlord may effect such removal and repairs at Tenant's expense, plus interest at the rate of eighteen percent (18%) per annum until paid by Tenant in full. All removable trade fixtures, signs, carpeting and drapes shall remain the property of Tenant, subject at all times to Landlord's lien for rent and other sums which may become due to Landlord under this Lease. Any approval or consent given by Landlord pursuant to this paragraph may be given subject to conditions or requirements imposed by Landlord, including, but not limited to, conditions regarding the times and manner in which work will be conducted.

Section 11.04 - Waiver of Claims. Neither Landlord nor Landlord's agents nor servants shall be liable, and Tenant waives any and all claims for damage to persons or property sustained by Tenant or any occupant of the Mall resulting from the Premises or any part of the Mall or any equipment or appurtenances, or resulting from any accident in or about the Premises or the Mall, or resulting directly or indirectly from any act or neglect of any tenant or occupant or of any other person, including Landlord's agents and servants, unless due to Landlord's gross negligence. This paragraph shall apply especially, but not exclusively to, flooding and damage caused by refrigerators, sprinkling devices, roof leaks, air conditioning apparatus, water, frost, steam, excessive heat or cold, falling plaster, broken glass, sewage, gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures and shall apply equally whether any such damage results from the act or neglect of Landlord or of other tenants, occupants or servants in the Mall or of any thing or circumstance above mentioned or referred to, or any other thing or circumstance whether of a like nature or of a wholly different nature. All property belonging to Tenant or any occupant of the Premises shall be there at the risk of Tenant

and Landlord shall not be liable for any damages thereto or theft or misappropriation thereof.

Section 11.05 - Cleanliness and Waste. Tenant shall keep the Premises and the walks and areas directly in front of and directly behind the premises at all times in a neat, clean and sanitary condition, free from waste or debris and shall neither commit nor permit any waste or nuisance thereon.

ARTICLE XII TENANT'S ADDITIONAL AGREEMENTS

Section 12.01 - Tenant's Affirmative Obligations. Tenant agrees, at its expense, to:

- A. **LIGHT DISPLAY WINDOWS:** Keep the display windows, canopies, signs, and sign parapet area, if any, in and/or on the Premises electrically lighted from dusk until 10:00 P.M. on all days during which the Centers open for business and during such other periods as Landlord may reasonably prescribe;
- B. **KEEP PREMISES CLEAN:** Keep the Premises (including exterior and interior portions of all windows, doors and all other glass) in a neat and clean condition;
- C. **KEEP PREMISES ATTRACTIVE:** Maintain the Premises and Tenant's personal property therein as an attractive shopping area in accordance with the general character of the Center;
- D. **NON-SELLING SPACE:** Used for office, clerical or other non-selling purposes only such space in the Premises as is reasonably required for Tenant's business therein, and not to perform therein any functions for any other Premises of Tenant or for any other person or entity;
- E. **LABOR REGULATIONS:** Take no action which would violate Landlord's union or non-union contracts, if any affecting the Center, nor create or permit any work stoppage, picketing, labor disruption or dispute or any interference with the business of Landlord or any tenant or occupant in the Center or with the rights and privileges of any customer or other person(s) lawfully in and upon the Center, nor cause any impairment or reduction of the good-will of the Center;
- F. **COMPLY WITH LAWS, ETC.:** Promptly comply with and conform to (a) the current and future recommendations and requirements of Landlord's insurers, and (b) all laws, statutes, ordinances, rules and regulations of governmental and quasi-governmental authorities or property owner's association (such as, but not limited to zoning, building, environmental, garbage/rubbish/waste-recycling, freon storage/removal and replacement, including, if applicable, machinery and equipment, disposal, fire and safety laws and codes) now or hereafter affecting the Premises, including those requiring the making of structural changes to the Premises;
- G. **PAY TAXES:** If applicable, pay before delinquency all taxes, assessments and public charges levied, assessed or imposed on Tenant's business or Tenant's improvements, betterments, fixtures, furnishings or equipment in the Premises;
- H. **PAY LICENSE FEE:** Pay when and as due all license fees, permit fees and charges of a similar nature for any business or undertaking conducted in the Premises;
- I. **TENANTS' FIXTURES:** Operate its business in the Premises with adequate equipment and trade fixtures which shall, when initially installed, be functional, sufficient and of first class quality and workmanship;
- J. **GARBAGE:** Handle and dispose of all rubbish, garbage and waste from Tenant's operations in

accordance with regulations established by Landlord and/or governmental or quasi-governmental authorities and not permit the accumulation (unless in concealed metal containers) or burning of any waste, rubbish or garbage in, on or about the Premises or within the boundaries of the Center. Without limiting the foregoing, Tenant agrees that no waste, rubbish or garbage of any nature will be permitted to be placed on any part of the Common Area, nor will Tenant be permitted to remove any of the same through any part of the Common Area in the covered mall portion of the Center;

K. HEAT/AIR CONDITION THE PREMISES: Shut off all exhaust fans, if any, servicing the Premises at all times when the Premises are closed. If the Premises front on the enclosed mall, Tenant shall maintain positive air pressure so as to prevent the drawing of heated or cooled air from the enclosed mall and shall keep the Premises heated or air conditioned as the case may be, to at least the same minimum temperature (in the case of air conditioning) as Landlord shall attempt to maintain in such covered mall portion of the Center;

L. CLEANING PROGRAM: Participate in the window cleaning and exterminating program, if any, that now or hereafter may be established by Landlord for all or substantially all other tenants in the Center or the building in which the Premises are located;

M. RULES AND REGULATIONS: Obey and observe (and, as applicable, compel its individuals, officers, employees, contractors, licensees, invitees, subtenants, concessionaires and all others doing business with it to obey and observe) all rules and regulations established by Landlord from time to time. Any rule or regulation promulgated by Landlord under this Article or any other provisions of this Lease will be final and binding on Tenant upon delivery of a copy thereof to Tenant. Notwithstanding any contrary provision hereof, Landlord will have the right to promulgate rules and regulations which do not apply uniformly to all tenants of the Center if Landlord deems that it has a reasonable basis for doing so. By way of illustration and not limitation, it will be deemed that Landlord has a reasonable basis for promulgating rules and regulations which control the flow of customer traffic to the Premises of any non-retail tenants;

Section 12.02 - Tenant's Negative Obligations. Tenant agrees that it shall not at any time without first obtaining Landlord's written consent in each instance:

A. NOT ABANDON PREMISES: Abandon or vacate the Premises;

B. NOT CHANGE EXTERIOR ARCHITECTURE: Change (whether by alteration, replacement, rebuilding or otherwise) the exterior color and/or architectural treatment of the Premises or of the building in which the same are located or any part thereof;

C. NOT MISUSE PLUMBING FACILITIES: Use the plumbing facilities for any purpose other than that for which they were constructed, or dispose of any garbage or other foreign substance therein, whether through the utilization of so-called "disposal" or similar units, or otherwise;

D. LIENS: Subject any fixtures, furnishings or equipment which are in, on, or affixed to any mortgages, liens, conditional sales agreements, security interests or other encumbrances;

E. NOT DAMAGE THE PREMISES: Perform any act or carry on any practice which may damage, mar or deface the Premises or any other part of the Center;

F. NO VENDING MACHINES: Without the prior consent of Landlord, operate in the Premises or in any other part of the Center any coin or token operated vending machine or similar device (including pay telephones, pay lockers, pay toilets, scales, amusement devices and machines for the sale of beverage, foods, candy, cigarettes or other merchandise and/or commodities);

G. NO AWNINGS: Install any awnings in or on the Premises which are visible to public view outside the Premises;

H. WINDOW CLEANING AND JANITORIAL SERVICES: Permit window cleaning or other exterior maintenance or janitorial services in and for the Premises to be performed except by such reputable person(s) who are reasonably acceptable to Landlord;

I. NOT EXCEED FLOOR LOAD: Place a load on any floor in the interior delivery system, if any, or in the Premises exceeding the floor load per square foot which such floor was designed to carry, nor have installed, operated or maintained therein any heavy item of equipment except in such manner as to achieve a proper distribution of the weight;

J. NOT EXCEED ELECTRICAL LOAD: Install, operate or maintain in the Premises any electrical equipment which will overload the electrical system therein, or any part thereof, beyond its reasonable capacity for proper and safe operation as determined by Landlord in light of the over-all system and requirements therefor in the Center, or which does not bear Underwriter's Laboratories approval;

K. NOT PERMIT ODORS, NOISE, ETC.: Cause or permit any vibration, noise, odor or other effect that is undesirable to Landlord, its other Tenants or Invitees, in its sole discretion, to emanate from the Premises or any machine or other installation therein, or otherwise cause or permit the Premises to constitute a nuisance or annoyance or to interfere with the safety, comfort or convenience of Landlord or any of the other occupants of the Center or their customers, agents or invitees or any other persons lawfully in or upon the Center. Without limiting the foregoing, Tenant will not place any loudspeaker or other sound amplifying device, whether for music or voice, on the exterior of the Premises or in any part of the Common Area. Upon notice by Landlord to Tenant that any of the aforesaid is occurring, Tenant shall immediately remove or control the same to Landlord's satisfaction. In the event Tenant fails to do so, the Landlord may remedy the subject problem, and the cost of so doing, including any legal fees or costs incurred by Landlord shall be paid by Tenant as additional rent. Said sum shall be paid by Tenant to Landlord within five (5) days of receipt of Landlord's statement. If not so timely paid, the sum shall accrue interest at the rate of eighteen percent (18%) per annum until paid in full.

L. NOT INTERFERE WITH INSURANCE: Use or occupy the Premises, or do or permit anything to be done in the Premises, which in any manner could (a) impair the ability of Landlord and/or Tenant to obtain at standard rates any insurance required or desired, or (b) invalidate or increase the cost to Landlord of any existing insurance;

M. DELIVERIES: Make or permit any deliveries to the Premises except in accordance with the rules and regulations set forth and amended by Landlord from time to time, as needed. Tenant agrees that Tenant and its deliverymen will cause all deliveries to be made and completed as promptly as possible and with the least possible disturbance to Landlord and other tenants of the Mall and their respective agents, employees, licensees, contractors, patrons and other invitees.

ARTICLE XIII DESTRUCTION

Section 31.01 - Destruction by Fire or Casualty

A. In the event the Premises shall be damaged by fire, explosion, windstorm or any other casualty, Landlord shall repair such damages and put the Premises in the condition as existed at the time of the casualty as rapidly as reasonably possible.

B. Notwithstanding any other provision of this Section to the contrary, if the Premises shall be damaged during the last two (2) years of the term, and such damage shall be to the extent of more than twenty-five percent (25%) of the value of the Premises at the time of such damage, then Landlord may, at its election upon notice to Tenant, within ninety (90) days after such damage, terminate this Lease, upon at least fifteen (15) days prior written notice thereof, at the expiration of which time this Lease shall be terminated.

C. Tenant covenants that it will give notice to Landlord of any accident or damage, whether such damage is caused by insured or uninsured casualty, occurring in, on, or about the Premises within twenty-four (24) hours from the time of said accident or damage. In the event Tenant breaches its covenant set forth in this Paragraph C, Landlord in addition to all of its other rights and remedies under this Lease, at law or in equity, shall be relieved, at its option, of any of its obligations under this Section.

Section 13.02 - Destruction of Mall. In the event that fifty percent (50%) or more of the rentable area of the Mall shall be damaged or destroyed by fire or other cause, notwithstanding the fact that the Premises may be unaffected by such fire or other cause, Landlord shall have the right, upon providing written notice to Tenant within sixty (60) days from and after said occurrence, to elect to cancel and terminate this Lease. Upon giving such notice to Tenant, the term of this Lease shall expire by lapse of time upon the thirtieth (30th) day after such notice is given, and Tenant shall vacate the Premises and surrender the same to Landlord.

Section 13.03 - Excessive Costs of Repair. Notwithstanding anything herein contained to the contrary, if the proceeds of Landlord's insurance recovered or recoverable as a cost of replacement of the Premises and the building in which they are located are insufficient to pay for necessary repairs, or the Premises or said building shall be damaged as a result of a risk which is not covered by Landlord's insurance, Landlord shall have the right, upon providing written notice to Tenant within ninety (90) days after said occurrence, to elect to cancel and terminate this Lease. Upon the giving of such notice to Tenant, the term of this Lease shall expire by lapse of time upon the thirtieth (30th) day after such notice is given, and Tenant shall vacate the Premises and surrender the same to Landlord.

ARTICLE XIV POSSESSION AND SURRENDER

Section 14.01 - Possession by Tenant. Landlord covenants and warrants that it has full right and authority to enter into this Lease for the full term hereof. Landlord further covenants that Tenant, upon paying the rents provided for herein and upon performing the covenants and agreements of this Lease to be performed by Tenant, will have, hold and enjoy the quiet possession of the Premises.

Section 14.02 - Surrender of Premises. Tenant agrees to surrender the Premises to Landlord at the expiration or sooner termination of the term in as good condition as they were at the commencement of Tenant's occupancy, ordinary wear and tear, and damage by fire and taking by condemnation or eminent domain proceedings excepted. Whether made by Landlord or Tenant, all alterations, fixtures and improvements, except only Tenant's office furniture, its other personal property and its trade fixtures which are readily removable without injury to the Premises, will be and remain a part of the Premises at the end of the term, unless Landlord, by written notice given to Tenant at least ten (10) days before the end of the term, elects to have all or any of the same removed, in which case Tenant will remove the same at its expense, and repair and restore the Premises failing which the same will be deemed abandoned and at the option of Landlord will become Landlord's property and/or be removed, stored, sold or otherwise disposed of at Tenant's expense, plus interest at the rate of 18% per annum. In the event of any such sale the proceeds will belong to Landlord without any obligation to account to Tenant therefor. In all events, Tenant will promptly restore all damage caused in connection with any removal provided for by this Paragraph. Tenant will pay to Landlord upon request all damages that Landlord may suffer on account of Tenant's failure to surrender possession as and when aforesaid and will indemnify Landlord against all liabilities, costs and expenses (including attorneys'

fees and court costs in instituting, prosecuting and/or defending any action or proceeding through appeal arising out of Tenant's delay in so delivering possession, including claims of any succeeding tenant. No offer of surrender of the Premises, by delivery to Landlord or its agent of keys to the Premises or otherwise, will be binding on Landlord unless accepted by Landlord, in writing, as an effective surrender of the Premises. Without limiting Landlord's rights and remedies, if Tenant holds over possession of the Premises beyond the end of the term, during the holdover period Tenant will be a Tenant at sufferance at a monthly use and occupancy charge equal to double the amount of the Monthly Rent and Additional Rent payable for the last month of the term.

ARTICLE XV UTILITIES

Section 15.01 - Payment for Utilities. Tenant agrees immediately upon obtaining access to the Premises to contract for, in Tenant's own name, and to pay for all utility service rendered or furnished to the Premises, including heat, water, gas, electricity, sprinkler charges, fire line charges, sewer rental, sewage treatment facilities and the like, together with all taxes or other charges levied on such utilities and governmental charges based on utility consumption, standby utility capacity, or potential utility use. If any such utilities are not separately metered or assessed or are only partly separately metered or assessed and are used in common with other tenants of the Center, Tenant will pay to Landlord an apportionment of such charges for utilities used in common, based on the Floor Area leased to each tenant using such common facilities in addition to Tenant's payments of the separately metered charges. In the alternative, Tenant may, upon request to Landlord and upon Landlord's prior written consent if granted, provide separate meters at Tenant's expense in accordance with the requirements for any Tenant's work as provided for in Article VIII of this Lease. If Landlord shall supply any such services, Tenant will purchase same from Landlord at charges not in excess of the charges for the service in question made by any public utility corporation or governmental or quasi-governmental agency supplying such utilities in the area. Any such charges for service supplied by Landlord or charges for utilities which may be rebilled by Landlord, shall be due and payable as additional rent, within ten (10) days after billings therefor are rendered to Tenant. In no event shall Landlord be liable for the quality, quantity or failure or interruption of any such services to the Premises.

Section 15.02 - Landlord's Discontinuance of Utilities. Landlord may, with notice to Tenant, or without notice in the case of an emergency, cut off and discontinue gas, water, electricity and any or all other utilities whenever such discontinuance is necessary in order to make repairs or alterations, or when Tenant's payment therefor, or any other rents or charges due pursuant to this Lease, are delinquent. No such action by Landlord shall be construed as an eviction or disturbance of possession or as an election by Landlord to terminate this Lease, nor shall Landlord or its agents be in any way responsible or liable for such action and Tenant hereby expressly waives and releases all claims against Landlord and its agents therefor.

Section 15.03 - Landlord's Payment of Utilities. If the non-payment of utility charges payable by Tenant could give rise to a lien against the Premises and/or the Center or could result in Landlord being liable for payment of any such charges, then Landlord may pay such charges directly to the utility companies for Tenant's account and all such payments, plus interest at the rate of eighteen percent (18%) per annum or such higher rate as may be allowed by law, shall constitute sums due from Tenant to Landlord, payable forthwith on request as additional rent.

ARTICLE XVI ASSIGNMENT

Section 16.01 - Assignment or Sublease. Tenant shall not assign, mortgage or encumber this Lease, in whole or in part, or sublet all or any part of the Premises. This prohibition against assigning or subletting shall be

construed to include a prohibition against any assignment or subletting by operation of law.

ARTICLE XVII DEFAULT AND REMEDIES

Section 17.01 - Events of Default. The following events shall be deemed to be events of default by Tenant under this Lease if:

A. Tenant shall fail to pay when due any sum of money to be paid to Landlord hereunder, whether an installment of rent, any additional rent, or any other payment or reimbursement to Landlord required herein and such failure shall continue for a period of five (5) days from the date such payment was due regardless of the number of times of Landlord's prior acceptance of late payments and/or late charges, if Landlord notifies Tenant once in any six (6) month period that Base Rent or any Additional has not been paid when due without regard to any grace period, any further late payment in the next ensuing six (6) month period will constitute a default beyond the applicable grace period.

B. Tenant shall fail to comply with any term, provision or covenant of this Lease, including compliance with then promulgated Rules and Regulations of Landlord, (other than by failing to pay any sum of money) and shall not cure such failure within ten (10) days immediately if the failure involves a hazardous or emergency condition,) after written notice thereof to Tenant; or

C. Tenant shall fail to continuously occupy and use the Premises or shall abandon or vacate any substantial portion of the Premises. It is understood and agreed that such vacancy and failure to occupy and use the subject Premises shall be a default whether or not Tenant continues to pay rent during such period of vacancy or non-use; or

D. Tenant shall fail to immediately vacate the Premises upon termination of this Lease, by lapse of time or otherwise or upon termination of Tenant's right to possession; or

E. The leasehold interest of Tenant shall be levied upon under execution or be attached by process of law or Tenant shall fail to contest diligently the validity of any lien or claimed lien and give sufficient security to Landlord to insure payment thereof or shall fail to satisfy any judgment rendered thereon and have the same released, and such default shall continue for ten (10) days after written notice thereof to Tenant; or

F. Tenant or any guarantor of Tenant's obligation hereunder shall become insolvent, admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency statute, make an assignment for the benefit of creditors, make a transfer in fraud of creditors, apply for or consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or other arrangement under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable law or statute of the United States or any state thereof; or

G. A court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a receiver of Tenant, or of the whole or any substantial part of its property, with or without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within thirty (30) days from the date of entry thereof.

Section 17.02 - Remedies.

A. Upon the occurrence of any of such events of default described in the Lease, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever.

(i) Landlord may terminate, at its election, this Lease or terminate Tenant's right to possession only, without terminating the Lease;

(ii) Upon any termination of this Lease, whether by lapse of time or otherwise, or upon any termination of Tenant's right to possession without termination of the Lease, Tenant shall surrender possession and vacate the Premises immediately, and deliver possession thereof to Landlord. Tenant hereby grants to Landlord full and free license to enter into and upon the Premises in such event with or without process of law and to repossess the Premises and to expel or remove Tenant and any others who may be occupying or within the Premises and to remove any and all property therefrom, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without incurring any liability for any damage resulting therefrom. Tenant hereby waives any right to claim damages for such re-entry and expulsion, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law;

(iii) Upon termination of this Lease, whether by lapse of time or otherwise, Landlord shall be entitled to recover as damages, all rent, including Additional Rents, and other sums due and payable by Tenant on the date of termination, plus the sum of (a) an amount equal to the then present value of the rent, including any amounts treated as Additional Rents hereunder, and other sums provided herein to be paid by Tenant for the residue of the stated Term hereof, less the fair rental value of the Premises for such residue (taking into account the time and expense necessary to obtain a replacement tenant or tenants, including expenses hereinafter described in clause (iv) relating to recovery of the Premises, preparation for reletting and for reletting itself), and (b) the cost of performing any other covenants which would have otherwise required to have been performed by Tenant;

(iv) Upon any termination of Tenant's right to possession only without termination of the Lease:

(a) Landlord may enter, at Landlord's option, the Premises, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof as provided in subsection (ii) above, without such entry and possession terminating the Lease or releasing Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay the rent, including any amounts treated as Additional Rents hereunder, for the full term. In any such case Tenant shall pay forthwith to Landlord if Landlord so elects, a sum equal to the entire amount of the rent, including any Additional Rents hereunder, for the performance of the stated Term hereof, plus any other sums provided herein to be paid by Tenant for the remainder of the Lease term.

(b) Landlord may, but need not, relet the Premises or any part thereof for such rent and upon such terms and conditions as Landlord, in its sole discretion, shall determine, including the right to relet the Premises as a part of a larger area, and the right to change the character or use of the Premises. If Landlord decides to relet the Premises or a duty to relet is imposed upon Landlord by law, Landlord and Tenant agree that Landlord shall only be required to use the same efforts Landlord then uses to lease other properties Landlord owns or manages; provided, however, that Landlord or its Agents shall not be required to give any preference or priority to the showing or leasing of the Premises over any other space that Landlord may be offering to lease and may place a suitable prospective tenant in any such available space regardless of when such alternative space becomes available; provided, further, that Landlord shall not be required to observe any instruction given by Tenant about such reletting or accept any substitute tenant offered by Tenant unless such offered substitute tenant has a creditworthiness acceptable to Landlord, leases the entire Premises, agrees to use the Premises in a manner consistent with the Lease and leases the Premises at the same rent, for no more than the current Term and on the same other terms and conditions as in this Lease without the expenditure by Landlord

for tenant improvements or broker's commissions. In any such case, Landlord may, but shall not be required to, make repairs, alterations and additions in or to the Premises and redecorate the same to the extent Landlord deems necessary or desirable, and Tenant shall pay, upon demand, the cost thereof, together with Landlord's expenses of reletting, including, without limitation, any broker's commission incurred by Landlord. If the consideration collected by Landlord upon any such reletting plus any sums previously collected from Tenant are not sufficient to pay the full amount of all rent, including any amounts treated as additional rent hereunder and other sums reserved in this Lease for the remaining term hereof, together with the costs of repairs, alterations, additions, redecorating, and Landlord's expenses of reletting and the collection of the rent accruing therefrom (including Attorneys' fees and in-house broker's commissions), Tenant shall pay to Landlord the amount of such deficiency upon demand and Tenant agrees that Landlord may file suit to recover any sums falling due under this subsection from time to time;

(v) Landlord may enter into and upon the Premises, at Landlord's option, with or without process of law, if Landlord reasonably determines that Tenant is not acting within a commercially reasonable time to maintain, repair or replace anything for which Tenant is responsible hereunder and correct the same, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage resulting therefrom. Tenant agrees to reimburse Landlord, on demand, as additional rent, for any expenses which Landlord may incur as a result of effecting compliance with Tenant's obligations under this Lease;

(vi) Any and all property which may be removed from the Premises by Landlord pursuant to the authority of the Lease or of law to which Tenant is or may be entitled, may be handled, removed and stored, as the case may be, by or at the direction of Landlord at the sole risk, cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. Any such property of Tenant not removed by Tenant from storage within thirty (30) days after the removal from the Premises shall conclusively be presumed to have been conveyed by Tenant to Landlord under this Lease as a bill of sale without further payment or credit by Landlord to Tenant.

B. Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies provided herein by law (all such remedies being cumulative), nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due or other remedies available to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. No act or thing done by Landlord or its agents during the Term hereby granted shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or accept a surrender of said Premises shall be valid unless in writing and signed by Landlord. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Landlord's acceptance of the payment of rental or other payments due hereunder after the occurrence of an event of default shall not be construed as a waiver of such default, unless Landlord so notifies Tenant in writing. Forbearance by Landlord to pursue or enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of Landlord's right to pursue or enforce any such remedies with respect to such default or any subsequent default. If, on account of any breach or default by Tenant in Tenant's obligations under the terms and conditions of this Lease, it shall become necessary or appropriate for Landlord to employ or consult with an attorney concerning, or to enforce or defend any of Landlord's rights or remedies hereunder, Tenant agrees to pay all costs and expenses in connection therewith including reasonable Attorney's fees so incurred, including those incurred in any post-trial or appellate proceedings.

C. Without limiting the foregoing, in the event Tenant is a corporation Tenant shall notify Landlord in

writing of the identity of Tenant's Registered Agent, and Tenant agrees that such service of process upon such party shall constitute personal service of process upon Tenant (provided, however, Landlord does not hereby waive the right to serve the Tenant with process by any other lawful means). In the event the identity of said Agent changes at any time during this Lease Term, then Tenant shall notify Landlord of the new Agent's identity within three (3) days of such change. Tenant expressly waives any right to trial by jury.

Section 17.03 - Default by Landlord. Landlord shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within sixty (60) days (or such additional time as is reasonably required to correct any such defaults) after written notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation.

ARTICLE XVIII SIGNS, ADVERTISING AND LIGHTING

Section 18.01 - Signs. TENANT SHALL NOT ERECT OR MAINTAIN ANY SIGN ON THE EXTERIOR OF THE PREMISES WITHOUT LANDLORD'S PRIOR WRITTEN CONSENT. If Landlord's prior written consent to an exterior sign has been obtained by Tenant, Tenant agrees that such sign shall be in accordance with (a) Landlord's sign requirements, including, without limitation, that such sign may advertise only Tenant's trade name or type of business and must comply with Landlord's then requirements in design, architecture, size and colors (which shall include the color background of exterior walls, fascia and sign parapets on which signs are placed and which Landlord shall have the right to change from time to time) and (b) any applicable statutes, ordinances, codes, rules and/or regulations of governmental and quasi governmental authorities, including any governmental, quasi governmental or property owner's association and Tenant shall maintain any and all such signs, exterior wall, fascia, and sign parapet areas in good condition and repair at all times. Upon vacating the Premises, Tenant agrees, at its sole cost and expense, to remove its signs and repair any damage caused by the installation, maintenance or removal thereof. Landlord shall have the right to remove any signs in violation of these provisions at tenant's expense plus interest at the rate of eighteen percent (18%) per annum or such higher rate as may be allowed by law, without notice to Tenant and without any liability therefor.

In no event shall Tenant display a sign advertising any business other than that conducted by Tenant. Further, Tenant shall not display any signs indicating a new business location to which Tenant is moving or intends to move. Landlord shall have the right to immediately remove any signs displayed in violation of these provisions.

Section 18.02 - Advertising. Without Landlord's prior consent and approval, Tenant shall not (a) install any exterior lighting or plumbing fixtures under canopy signs, shades or awnings, or any exterior decorations or painting, or build any fences or make any changes to the storefront; (b) erect or install any exterior or interior window or door signs or advertising media, window or door lettering or placards; (c) keep or display any merchandise on or otherwise obstruct the sidewalks or other areas adjacent to the Premises; or (d) fail to maintain the display windows and signs in a neat and clean condition. Tenant shall not use any advertising or other media reasonably objectionable to Landlord or other tenants and/or in violation of any local codes governing same, such as loudspeaker, phonographs or radio broadcasts that can be heard outside the Premises.

Section 18.03 - Lighting. Tenant shall keep the display sign and window in the Premises lighted from dusk until the Center closes (whichever occurs later) or at such other times as may be designated by Landlord.

**ARTICLE XIX
EMINENT DOMAIN**

Section 19.01 - Parties' Rights in Condemnation of Public Taking.

A. If the Premises, or any part thereof, shall be permanently taken or condemned or transferred by agreement in lieu of condemnation, for any public or quasi-public use or purpose by any competent authority, and whether or not this Lease shall be terminated, the entire compensation award therefor, both leasehold and reversion, shall belong to Landlord without any deduction therefrom for any present or future estate of Tenant and Tenant hereby assigns to Landlord all its rights, title and interest in and to any such award. Tenant shall, however, be entitled to claim, prove and receive from the condemning authority (and not from Landlord) in the condemnation proceedings such separate award as may be allowed for the unamortized cost of fixtures and other equipment installed by it but only if such award shall be in addition to Landlord's award for land, buildings and other improvements (or portions thereof) and other compensable items in connection with the taking, as if this sentence were not included herein.

B. If the entire Premises shall be taken, condemned or transferred as aforesaid, then this Lease shall terminate and shall become null and void from the time possession thereof is acquired by the condemning authority and from that date the parties hereto shall be released from any future obligations hereunder. However, in the event that only a portion of the Premises shall be so taken, condemned or transferred, then Landlord may elect to terminate this Lease or repair and restore the portion not affected by the taking, and thereafter fixed minimum rent and other charges to be paid by Tenant shall be equitably and proportionately adjusted.

C. If in Landlord's judgment a material portion of the Center shall be taken, condemned or transferred as aforesaid (regardless of whether the Premises are affected), Landlord may terminate this Lease by giving Tenant written notice of its election to do so. In such event this Lease and the Term shall terminate ninety (90) days after the date of said notice and thereupon each party will be relieved of all obligations and liabilities accruing under this Lease subsequent to the effective termination date, and the provisions with respect to the awards shall be as set forth above in Paragraph "A" of this Article XIX. Until the effective termination date all terms and conditions of this Lease will be and remain in full force and effect.

D. Notwithstanding anything in this Lease to the contrary, (a) if all or any portion of the Center shall be taken, condemned or transferred and the award to Landlord is insufficient to pay Landlord for the costs of repairing or restoring the Center or any part thereof (including the Premises), or (b) if any mortgagee of the Center, or anyone else entitled to all or any part of Landlord's award does not consent to the payment thereof to Landlord for such purpose; then, and in any such event, Landlord, at its election, may terminate this Lease on thirty (30) days' prior written notice to Tenant. In such event this Lease and the Term shall terminate thirty (30) days after the date of said notice and thereupon each party will be relieved of all obligations and liabilities accruing under this Lease subsequent to the effective termination date. Until the effective termination date all terms and conditions of this Lease will be and remain in full force and effect.

**ARTICLE XX
QUIET ENJOYMENT**

Section 20.01 - Tenant's Right to Quiet Enjoyment. Landlord agrees that if Tenant timely pays the rents and other charges herein provided and performs all of the obligations herein stipulated to be performed on Tenant's part, Tenant shall have quiet enjoyment and possession of the Premises, subject to all terms and conditions of this Lease.

Section 20.02 - Landlord's Changes. Anything herein to the contrary notwithstanding, Landlord expressly reserves the right at any time or times to change the name and/or address of the Center and make changes, additions, deletions, removals, replacements, alterations and improvements in and to the Center and/or its facilities, including construction at any time(s) of upper level space above any buildings now or hereafter existing in the Center and any work done to comply with governmental or quasi-governmental requirements. In no event shall Landlord be subject to any liability therefor nor shall any such actions constitute a default of Landlord's covenant of quiet enjoyment or entitle Tenant to any compensation, rent reduction, Lease amendment or termination or any other redress or remedy.

ARTICLE XXI SECURITY DEPOSIT

Landlord acknowledges that it has received from Tenant the sum of One Thousand Six Hundred Ninety-Seven and 50/100 (\$1,697.50) Dollars from the prior lease of Suites 14A, 14B, and 14C, which sum is paid to Landlord as security for the full and faithful performance and observance by Tenant of the terms and conditions of this Lease, including the payment of rent and additional rent. No interest shall be payable on said deposit. In the event of any default hereunder, Landlord may use, apply or retain the whole or any part of the security deposit to the extent required for the payment of any rent, additional rent and/or expenses that Landlord may incur by reason of such default, including any damages or deficiency in the reletting of the Premises, whether such damages or deficiency should occur before or after summary proceedings or other re-entry by Landlord. If Tenant fully and faithfully complies with all of the terms and conditions of this Lease, the security deposit shall be returned to Tenant within thirty (30) days after the date fixed as the expiration of the Term, provided that Tenant has then delivered possession of the Premises to Landlord in the condition required by this Lease. Landlord shall have the right to apply said security deposit or any part thereof to the curing of any default that may then exist, without notice to Tenant or prejudice to any other rights or remedies which Landlord may have on account thereof. If any portion of the security deposit is used or applied, Tenant shall, within five (5) days after written demand, deposit cash with Landlord in an amount sufficient to restore the security deposit to its original amount, and Tenant's failure to do so shall be a material breach of this Lease. In the event of a sale or leasing of the land and/or building of which the Premises form a part, Landlord shall have the right to transfer the security deposit or the unused portion thereof to the transferee or tenant and Landlord shall thereupon be deemed released by Tenant from all liability for the return of the security deposit. Tenant agrees in such event, to look solely to the new landlord for the return of the security deposit and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new landlord. Tenant further agrees not to assign or encumber, nor attempt to assign or encumber, the monies deposited as security and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

ARTICLE XXII MISCELLANEOUS

Section 22.01 - Notices. All notices and rental checks shall be sent to Landlord in care of Jess R. Santamaria, at 675 Royal Palm Beach Boulevard, Royal Palm Beach, Florida 33411 or until Tenant is notified otherwise in writing. All notices given to the Tenant shall be sent to Tenant at the leased premises or at 14000 Greenbriar Blvd., Wellington, FL 33414 or until Landlord is notified otherwise in writing. Except for monthly rent or additional rent notices, all notices to each party shall be by hand delivery or certified mail, return receipt requested.

Section 22.02 - Waiver. One or more waivers of any breach of a covenant, term, condition of this Lease by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant,

term or condition. The consent or approval of either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 22.03 - Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant other than Landlord and Tenant. It being expressly understood and agreed that neither the method of computation of rent nor any of the other provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the customary relationship of a landlord and tenant.

Section 22.04 - Negation of Personal Liability. Notwithstanding anything contained herein to the contrary, Tenant acknowledges and agrees that neither Landlord nor its individual principals or agents shall have any personal liability with respect to any of the provisions of this lease and Tenant shall look solely to the fee estate and personal property of Landlord in the land and buildings comprising the Mall of which the Premises forms a part for the satisfaction of Tenant's remedies, including without limitation, the collection of any judgment or the enforcement of any other judicial process requiring the payment or expenditure of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be observed and/or performed by Landlord, subject, however, to the prior rights of any holder of any mortgage covering all or part of the Mall. No other assets of Landlord whether real or personal in nature or any individual principal or agent of Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claim. In the event Tenant obtains a judgment against Landlord, the judgment docket shall be so noted as to reflect the Landlord as the sole judgment debtor. This Section shall inure to the benefit of Landlord's successors and assigns and their respective individual principals, and agents.

Section 22.05 - Governing Laws. The laws of the State of Florida shall govern the validity, performance and enforcement of this Lease. The parties agree that in the event of litigation venue shall lie in Palm Beach County.

Section 22.06 - Savings Clause. The invalidity or unenforceability of any provision of this Lease shall not affect or impair the validity or enforceability of any other provision.

Section 22.07 - Paragraph Headings. The paragraph titles herein are for convenience only and do not define, limit or construe the contents of such paragraphs.

Section 22.08 - Covenant to Bind Successors. It is agreed that the provisions, covenants and conditions of this Lease shall be binding upon the legal representatives, heirs, successors and assigns of the respective parties hereto.

Section 22.09 - Estoppel Certificate. Within five (5) days after request therefor by Landlord, Tenant shall provide in recordable form a certificate to any prospective mortgagee or purchaser, or to Landlord, certifying (if such be the case) that this Lease is in full force and effect and there are no defenses or offsets thereto, or stating those claimed by Tenant, and any other accurate statement reasonably required by Landlord or the prospective mortgagee or purchaser. The failure by Tenant to furnish such certificate within the time period stated above shall be deemed to mean that this Lease is in full force and effect and there are no defenses or offsets by Tenant. Additionally, Tenant hereby irrevocably appoints Landlord as attorney-in-fact for Tenant with full power and authority to execute and deliver in the name of Tenant any such documents, such power being coupled with an interest.

Section 22.10 - Notice to Mortgagee. If the leased Premises or any part thereof are at any time subject to a first mortgage, and this Lease or the rentals are assigned to such mortgagee and the Tenant is given written notice

thereof, including the post office address of such assignee, then the Tenant shall not terminate this Lease for any default on the part of the Landlord without first giving written notice to such assignee, specifying the default in reasonable detail and affording such assignee a reasonable opportunity to make performance for and on behalf of Landlord.

Section 22.11 - Mortgage Subordination. Tenant accepts this Lease subject and subordinate to any mortgage and/or deed of trust now or at any time hereafter constituting a lien or charge upon the Premises and/or the Mall without the necessity of any act or execution of any additional instrument of subordination; provided, however, that if the mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have Tenant's interest in this Lease superior to any instrument, then by notice to Tenant from such mortgagee, trustee or holder, this Lease shall be deemed superior to such lien, regardless of when this Lease was executed. Tenant shall at any time hereafter on demand execute any instruments, releases or other documents which may be required by any mortgagee for the purpose of evidencing the subordination of this Lease to the lien of any such mortgage or for the purpose of evidencing the superiority of this Lease to the lien of any such mortgage, as the case may be. Additionally, Tenant hereby irrevocably appoints Landlord as Attorney-in-fact for Tenant with full power and authority to execute and deliver in the name of Tenant any such documents, such power being coupled with an interest.

Section 22.12 - No Accord and Satisfaction. No acceptance by Landlord of a lesser sum than the full amounts of rents or other charges then due shall be deemed to be other than on account of the earliest of such rents or charges then due, nor shall any endorsement or statement on any check or letter accompanying any check or payment for rent or other charge be deemed an accord and satisfaction, and Landlord may accept such check or payment containing such endorsement or statement without prejudice to its right to recover the balance of monies due from Tenant or to pursue any other remedy provided by law or in this Lease.

Section 22.13 - Force Majeure. Landlord shall be excused for any period of delay in the performance of any obligation hereunder when such delay is caused by any circumstance beyond Landlord's reasonable control, including labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental or quasi-governmental regulations, controls or shutdowns, administrative hearings or judicial litigation including any adverse findings, orders, verdicts or judgments therein, fire or other casualty, inability to obtain any materials, services or financing, weather or other acts of God.

Section 22.14 - Recording. Tenant shall not (by itself or through a third party) record this Lease or any reference hereto in the Public Records of Palm Beach County where the Premises; however upon Landlord's request from time to time and, within ten (10) days after such request, Tenant shall execute, acknowledge and deliver to Landlord a "short form" or memorandum of this Lease for recording purposes.

Section 22.15 - Brokers. Tenant represents and warrants to Landlord that no real estate broker, agent or finder was involved on its behalf in negotiating or consummating this Lease. Tenant acknowledges and agrees to indemnify Landlord and its agents against any and all liabilities, costs and expenses (including attorneys' fees and, in the event of litigation, such fees plus court costs through appeal) arising from any claims of any real estate broker, agent or finder claiming to have dealt with or represented Tenant, or anyone acting for or on behalf of Tenant, in connection with any matters related to this Lease.

Section 22.16 - Invalidity of Provisions. If any provision of this Lease shall be held to be invalid or unenforceable to the maximum extent possible the remaining provisions of this Lease shall in no way be affected or impaired, and such remaining provisions shall continue in full force and effect.

Section 22.17 - Gender. As used in this Lease, the word "person" shall mean and include, where appropriate, an individual or a corporation, partnership or other entity; the plural shall be substituted for the singular and the

singular for the plural, where appropriate; the words of any gender shall mean and include any other gender.

Section 22.18 - Counterparts. This Lease can be executed in any number of counterparts, each of which, when fully executed, shall be deemed to be an original, and it shall not be necessary to produce or account for more than one such counterpart to prove the full execution of this Lease.

Section 22.19 - Consents. Whenever Landlord's consent or approval is expressly or impliedly required by any provision of this Lease, the consent or approval may be granted or withheld arbitrarily in Landlord's sole discretion unless otherwise specifically stated in such provision. An action for declaratory judgment or specific performance will be Tenant's sole right and remedy in any dispute regarding any obligation of Landlord under this Lease not to unreasonably withhold its consent or approval. If Tenant requests Landlord's consent or approval to any matter or thing expressly or impliedly requiring Landlord's consent or approval under this Lease, then Landlord, as a condition precedent to granting its consent or approval may require (in addition to any other requirements of Landlord in connection with such request) that Tenant pay as additional rent a processing fee of \$250.00 in connection with the consideration of such request and/or the preparation of any documents pertaining thereto.

Section 22.20 - Licenses, Permits and Authorizations. Tenant, at its sole cost and expense, shall procure, maintain and comply with all necessary licenses, permits and authorizations for conducting in a lawful manner Tenant's business at the Premises. Such licenses, permits and authorizations shall at all times be available for inspection by Landlord.

Section 22.21 - Payments.

A. With the exception of fixed minimum rent, all sums whatsoever payable by Tenant under this Lease will be deemed to be, and be collectible without set-off or deduction as additional rent whether or not so stated in any particular provision(s) hereof. No delay or failure of Landlord in rendering any bill or statement to Tenant will prejudice Landlord's right to thereafter render the same or others, nor constitute a waiver of or impair Tenant's obligation to make all of the payments required by this Lease. Any bill or statement to Tenant will be conclusive and binding unless within thirty (30) days after the date thereof Landlord receives Tenant's written explanation of Tenant's objection thereto.

B. Payment from Tenant by check will always be subject to timely collection of the funds represented thereby, and if any check tendered by or on behalf of Tenant in payment of any sum due under this Lease is dishonored for any reason, Tenant will pay to Landlord the sum of \$50.00 for each such check, to defray the expense of handling, processing and bookkeeping. If Landlord elects to redeposit Tenant's check and it is again dishonored for any reason, then in each such instance an additional \$50.00 will be paid by Tenant to Landlord. Any such check which Landlord elects not to re-deposit will be immediately replaced by Tenant with a cashier's check which is the direct obligation of a local bank or savings and loan institution. The amount of such replacement check shall be in the aggregate amount of the payment tendered, plus the Late Charge thereon, if any, plus the \$50.00 charge(s) required by this paragraph. All sums that may become due and owing to Landlord pursuant to this paragraph will constitute additional rent, payable within five (5) days after rendition to Tenant of a bill or statement therefor.

Section 22.22 - Survival of Obligations. All outstanding obligations and liabilities of Tenant under this Lease shall survive the expiration or sooner termination of the Term.

Section 22.23 - Florida Sales Tax. All rent, Additional Rents and other sums due to be paid by Tenant to Landlord hereunder shall be accompanied by the payment of sales and other tax thereon to the extent required by applicable Florida law, currently in the amount of six and one-half percent (6.5%). Tenant may provide to Landlord a valid and verifiable Certificate of Exemption, which will be considered compliance with this

provision.

Section 22.24 – Trash Removal. Tenant shall keep all garbage, trash, rubbish or other refuse in rat-proof containers solely within the interior of the Premises and shall deposit such garbage, trash, rubbish or other refuse, on a daily basis, in a dumpster to be provided and maintained by Landlord, in the parking area of the Mall or otherwise outside of the Premises (Tenant understands that any dumpster(s) provided by Landlord may be used by one or more other Tenants of the Mall), provided that the volume of same is consistent with the use of the Premises as a restaurant and bar and does not exceed the volume generated by the previous Tenant. In the event that larger or additional dumpsters or increased collections are required by virtue of an increase in the levels of garbage and waste produced by Tenant, Landlord may require Tenant to pay any additional charges related to the increased need for dumpsters and/or disposal. Tenant shall be responsible for the handling or pick up for garbage, rubbish, waste or debris related to remodeling or improvement made by Tenant at Tenant's expense.

Section 22.25 - Limitation on Certain Rights. Although Landlord has granted or may grant various rights to Tenant (e.g., respecting alterations, signs, etc.), Landlord will not be liable to Tenant nor will this Lease or any of Tenant's obligations hereunder be adversely affected if at any time Tenant cannot exercise such rights in whole or in part by reason of prohibitions, requirements, terms or conditions imposed by any governmental or quasi governmental authority, including, without limitation, the Wellington Environmental Control Committee ("WECC") or any private property owners' association.

Section 22.26 - Cleaning. Tenant agrees to furnish and pay for cleaning services for the Premises and painting (subject to the Landlord's approval) as may be required.

Section 22.27 - Fire and Sprinkler Protection. If at any time Landlord reasonably determines the need for any fire extinguishers) and/or other similar or dissimilar equipment or device(s) for the prevention of fire hazards, in or with respect to the Premises, then Tenant, at its sole cost and expense, will immediately furnish and install the same and will thereafter at its sole cost and expense maintain and repair (and, if necessary in Landlord's judgment, replace) the same to Landlord's satisfaction. Maintenance, repair and, if necessary in Landlord's judgment, replacement of the existing sprinkler system (if any) servicing the Premises will also be done by Tenant, at its sole cost and expense. If at any time Landlord determines the need for modification of such system or any part thereof as a result of business operations at the Premises, Tenant will promptly effect such modification at its sole cost and expense.

Section 22.28 - Radon Gas. Pursuant to Florida law (enacted effective as of January 1, 1989), Landlord hereby makes the following disclosure to Tenant: "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit'.

Section 22.29 - Special Covenant. It being recognized that the Mall has been developed and is maintained by Landlord as a location for a first rate type of business occupancy, Tenant agrees, as a special inducement to Landlord to enter into this Lease, that if Landlord determines that the Premises are regularly attracting persons whose presence in the Mall is deemed by Landlord to be undesirable, then notwithstanding any contrary provision hereof, such fact will constitute a default under this Lease beyond the applicable grace period and without the requirement of notice from Landlord entitling Landlord to the same rights and remedies as if such default were with respect to the non-payment of the fixed minimum rent reserved herein including, but not limited to, the termination of this Lease.

Section 22.30 - Attornment. In the event of (a) transfer of Landlord's interest in the Premises; or (b) the

termination of any ground or underlying lease or (c) the purchase of the Premises or Landlord's interest therein in a foreclosure sale or by deed in lieu of foreclosure under any mortgage or pursuant to a power of sale contained in any mortgage, then in any of such events Tenant shall, at Landlord's request, attorn to and recognize the transferee or purchaser of Landlord's interest or the landlord under the terminated ground or underlying lease, as the case may be, as Landlord under this Lease for the balance of the then remaining Term, and thereafter this Lease shall continue as direct lease between such person, as "Landlord", and Tenant, as "Tenant", and if the landlord under the terminated ground or underlying lease shall be an institutional lender, or if the transferee or purchaser acquired Landlord's interest pursuant to a foreclosure sale, deed in lieu of foreclosure or power of sale under a mortgage held by an institutional lender, such landlord, transferee or purchaser shall not be liable for any act or omission of Landlord prior to such lease termination or prior to such person's succession in title, nor be subject to any offset, defense or counterclaim accruing prior to such lease termination or prior to such person's succession in title, nor be bound by any payment of Rent or Additional Rents prior to such lease termination or prior to such person's succession in title for more than one (1) month in advance or by any modification of this Lease or any waiver, compromise, release or discharge of any obligation of Tenant hereunder unless such modification, waiver, compromise, release or discharge shall have been specifically consented to in writing by the landlord any such ground or underlying lease or the mortgagee under any such mortgage, and such person and each person succeeding to such person's interest in the Premises shall not be liable for any warranty or guaranty of Landlord under this Lease. If Landlord's interest in the building terminates by reason of sale or other transfer, Landlord will immediately thereupon be released from all further liability to Tenant under this Lease.

Section 22.31 - Jury Trial. Landlord and Tenant hereby mutually, voluntarily, and intentionally waive the right either may have to a trial by jury in respect to any and all civil action commenced by either party in connection with this Lease. If there are any facts or allegations that need to be tried in court of law, every position of said trial will be before a court without a jury.

Section 22.32 - Entire Agreement. This Lease, and any amendments attached hereto, constitutes the complete understanding of the parties. **ORAL OR WRITTEN REPRESENTATIONS NOT EMBODIED HEREIN ARE OF NO FORCE OR EFFECT.**

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, Landlord and Tenant, intending to be legally bound, have executed this Lease, as of the day and year first above written. If Tenant is an entity, the individual(s) signing this lease on behalf of Tenant hereby personally represent(s) and warrant(s) to Landlord that such individual(s) has/have been duly authorized and employed to do so by all necessary action of Tenant's Village Council and/or other requisite parties as the case may be.

Witnesses:

LANDLORD:
WELLINGTON MALL, LTD.

Print name:_____

By: Jess R. Santamaria, President
Jess R. Santamaria, Inc., corporate general partner

Print name:_____

TENANT:
VILLAGE OF WELLINGTON

Print name:_____

By: Darell Bowen
Its: Mayor

Print name:_____

STATE OF FLORIDA
COUNTY OF PALM BEACH

I hereby certify that on the ____ day of February, 2009, before me, a Notary Public in and for the above state and county, personally appeared Darell Bowen, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

NOTARY PUBLIC

My Commission Expires:

LEASE AGREEMENT

THIS LEASE dated February ___, 2009, by and between WELLINGTON MALL, LIMITED PARTNERSHIP, having an address of 675 Royal Palm Beach Blvd., Royal Palm Beach, FL 33411 (the "Landlord") and VILLAGE OF WELLINGTON, having an address of 14000 Greenbriar Blvd., Wellington, FL 33414, and a tax identification number of 65-0645105 (the "Tenant"). In consideration of the rents to be paid by the Tenant and agreements hereinafter provided to be performed by the parties hereto, Landlord leases to Tenant, and Tenant accepts and rents from Landlord, the Premises hereinafter described, for the period, at the rental and upon the terms and conditions hereinafter set forth.

ARTICLE I LEASED PREMISES

Section 1.01 - Leased Premises. Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the following described Premises (the "Premises"), situated in the City of Wellington, County of Palm Beach, State of Florida: The space known as **12794 W. Forest Hill Blvd., Units 14A, 14B, and 14C, Wellington, FL 33414**, which for purposes of this Lease, the parties agree contains approximately **Four Thousand Fifty-Six (4,056) square feet** of floor space, located in the Wellington Mall (the "Mall"). Frontage of the leased Premises shall be measured from center of partition to center of partition except that if the leased Premises or any part of it is an end space, the measurement shall include the full width of end walls; and depth of the leased Premises shall be measured from the exterior faces of the walls (outside dimensions). In computing the gross leasable area within the leased Premises no deduction or exclusion shall be made from areas or space otherwise computed by reason of stairs, interior partitions, mezzanines, or other interior construction or equipment. Provided that, in the event that during the term hereof either party conclusively establishes that the Premises contains square footage different than the above stated amount, then an appropriate adjustment will be made in fixed minimum rent and additional rents in accordance with the actual square footage. Such adjustment shall be prospective only, and not retrospective.

Section 1.02 - Use of Additional Areas. The use of and occupation by Tenant of the Premises shall include the non-exclusive use in common with others entitled thereto of the common areas of the Mall including parking areas, driveways, service roads, loading facilities and sidewalks; subject, however, to the terms and conditions of this Agreement and to the rules and regulations for the use thereof as prescribed from time to time by Landlord.

Section 1.03 - Use of Premises. Tenant shall continuously occupy and use the Premises exclusively for Palm Beach County Sheriffs' Department substation and for no other purpose whatsoever. Tenant further covenants and agrees to promptly comply with all statutes, ordinances, rules, orders, regulations and requirements of federal, state, county and city governments regulating the use by Tenant of the Premises. The restrictions set forth in this paragraph shall extend to all agents and employees of the Tenant.

ARTICLE II TERM OF LEASE AND COMMENCEMENT

Section 2.01 - Term of Lease. The term of this lease is five (5) years, commencing on April 1, 2009 ("Lease Commencement Date"), and expiring at midnight on March 31, 2014 (the "Term"), unless sooner terminated pursuant to any provision hereof.

Section 2.02 - Rent Commencement Date. The "Rent Commencement Date" shall be April 1, 2009.

ARTICLE III RENT

Section 3.01 - Payment of Rent. Tenant agrees to pay to Landlord, at the above specified address of Landlord or such other place as may from time to time be designated by Landlord, without prior demand and without any set off or deduction whatsoever, "Fixed Minimum Rent" and "Additional Rents" as hereinafter provided. The payment of rent shall begin on the Rent Commencement Date. In the event the Rent Commencement Date occurs on a day other than the first day of a month, Tenant shall pay rent for the fractional month on a per them basis (calculated on the basis of a thirty-day month) until the first day of the month following the Rent Commencement Date, and thereafter, the fixed minimum rent and additional rent shall be paid in equal monthly installments on the first day of each and every month in advance.

In the event Tenant fails to pay any installment of rent, including any amount treated as an Additional Rent hereunder, or other sums hereunder as and when such installment or other charge is due, Tenant shall pay to Landlord, on demand, a late charge in an amount equal to ten percent (10%) of such installment or other charge overdue in any month and ten (10%) percent each month thereafter until paid in full to help defray the additional cost to Landlord for processing such late payments, and such late charge shall be considered additional rent hereunder and the failure to pay such late charge within ten (10) days after demand therefor shall be an additional event of default hereunder. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law, and shall not limit Landlord's remedies in any manner. In the event any payment by Tenant's check is dishonored by the bank, all future payments must be made in the form of certified funds.

Section 3.02 - Fixed Minimum Rent.

A. The Tenant agrees to pay to the Landlord as fixed minimum rent, the sum of Four Thousand Eight Hundred Sixty-Seven and 67/100 (\$4,867.67) Dollars per month. , based upon the following:

B. Upon executing this Agreement, Tenant agrees to pay to the Landlord the following sums:

First month's rent of \$4,867.67

C. The fixed minimum rental required to be paid by the Tenant shall be adjusted on the anniversary of the Rent Commencement Date each calendar year (the "Rent Adjustment Date"). The rent adjustment shall be an additional Three (3%) Percent annually.

ARTICLE IV COMMON AREAS

A. The Common Area shall be subject to the exclusive control and management of Landlord and Landlord shall have, and hereby reserves, the unrestricted right to close any or all portions of the Common Area to such extent as may, in the opinion of Landlord, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or to the public therein or to close temporarily, if necessary in Landlord's judgment, all or any part of the parking areas in order to discourage non-customer parking. All space, areas and facilities in the Center not within the Premises, which Tenant may be permitted to use and/or occupy are to be used and/or occupied under a revocable and non-exclusive license and if such license shall be revoked, or if the amount, size or configuration of such space, areas and/or facilities shall be diminished or changed, this Lease shall remain in full force and effect and Landlord shall not be subject to any liability, nor shall Tenant be entitled to any compensation or reduction of rent, nor shall such revocation, change or diminution be deemed constructive or actual eviction. The Common Area shall be subject to such rules and

regulations as Landlord may, from time to time, adopt and Landlord expressly reserves the unrestricted right at any time to make changes, additions, deletions, alterations and/or improvements in and to the Common Area including changing its layout, adding to or subtracting from its shape and size, altering its locations, erecting thereon store buildings or other structures or improvements of any land and adding extensions to buildings or other structures or improvements of any kind thereon.

B. Landlord agrees to maintain the Common Area in reasonably good repair and reasonably clear of debris, lighted when necessary and open during each business day. Also, Landlord agrees to keep any enclosed mall areas lighted when necessary and maintained at a comfortable temperature during the normal business hours set by Landlord. Tenant shall be primarily responsible for maintaining the common area directly in front of or adjacent to the Premises in a clean condition and clear of any debris and shall be responsible for immediately notifying the Landlord in writing of any need for repairs or other maintenance in common areas in front of or adjacent to the Premises.

C. Landlord reserves the right, from time to time, to utilize portions of the Common Area (including common mall area, if applicable) for outdoor shows, display, automobile and other product shows, business promotions, the leasing of kiosks or sales space, or such other uses which, in Landlord's sole judgment, tend to attract the public. Further, Landlord reserves the right to utilize the lighting standards and other areas in the parking lot (and common mall area, if applicable) for advertising purposes and to additionally designate one or more parking areas for employee parking. **Tenant shall cause its employees to park only in such designated area(s) or, if none shall be designated, then only in the outer areas of the parking lot.**

D. Landlord grants to Tenant, during the Term, a non-exclusive license to use the Common Area as from time-to-time constituted. Such use will be in common with Landlord, Landlord's tenants, occupants in the Center and the respective parties' employees, agents, licensees, contractors, customers and other invitees.

ARTICLE V LANDLORD'S RIGHTS TO ACCESS AND ALTERATION

Section 5.01 - Access. Landlord or its agents will have the right to enter the Premises at all times to examine the Premises, to show them to prospective lenders, purchasers or Tenants of the Center and/or to make such repairs, replacements, alterations, improvements or additions as Landlord may deem necessary or desirable, all without any abatement of rent or additional rent and without the same constituting an eviction of Tenant in whole or in part. Without limiting the foregoing, Landlord reserves the right (but will not be obligated) to at any times(s) to install, maintain, use, repair and replace pipes, duct work, conduits, utility lines and wires installed in and through ceiling space and partitions, in or beneath the floor slab or above or below the Premises or other parts of the building. Landlord shall attempt to give Tenant reasonable advance notice of its exercise of such right except in the event of matters deemed by the Landlord to potentially constitute an emergency or hazard. During the six (6) months prior to the expiration of the Term, Landlord and its agents may enter the Premises and place upon the Premises the usual "For Rent" or similar notices, which notices Tenant will permit to remain without molestation. Said right of entry will likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions which do not conform to this Lease. If Tenant or Tenant's agent is not personally present to open and permit an entry into the Premises, at any time when for any reason an entry therein is necessary or permissible, Landlord or its agents may enter without rendering Landlord or its agents liable therefor and without in any manner affecting Tenant's obligations and liabilities under this lease. Nothing herein contained will impose on Landlord or its agents any obligation, responsibility or liability for the care, maintenance or repair of the building or any part thereof (including the Premises), except as otherwise specifically provided in this Lease.

Section 5.02 - Landlord's Alteration. Landlord will have the absolute right to make changes of any kind or nature in, upon and above Landlord's property, such as (without limitation) constructing additions to or

otherwise altering the building and altering the facade of the building at which the Premises are a part, and in connection therewith to do all things which Landlord deems necessary or desirable, without liability to Tenant and without affecting Tenant's monetary and other obligations hereunder. If excavation, construction or other work is to be performed on Landlord's property and/or adjacent land, in furtherance thereof Landlord or its designees may enter upon Landlord's property, including the Premises, and take such action as Landlord deems reasonably appropriate. Landlord is not required to do any work other than during normal business hours. Any such work will be done at such time(s) and in such manner as Landlord, in its discretion, may determine and such work may include, without limitation, at Landlord' option, the installation of new store fronts, erection and maintenance of scaffolding, bridges and/or barricades in front of the Premises and/or opening and changing the store fronts. Any such work to be done by Landlord may be done during ordinary business hours of business days without diminution, abatement or reduction in rent or any other compensation to Tenant as a result thereof. Tenant will fully cooperate with Landlord in connection with such work and will not make any claim for, nor will the same be deemed to be, constructive or actual eviction (whether partial or total).

ARTICLE VI PROPERTY IN THE PREMISES

Section 6.01 - Ownership of Personal Property. All leasehold improvements and betterments, including all light fixtures, carpeting, flooring, plumbing, sprinkler, heating and air-conditioning equipment and other construction to be done by Tenant shall, when installed, be free from any and all items therefore, attach to the freehold estate and become and remain the property of Landlord; provided, however that Landlord shall have the right to require Tenant to remove any of the improvements and betterments as provided for in Section 11.03. All readily removable trade fixtures, signs, carpeting and drapes shall remain the property of Tenant, subject at all times to Landlord's lien for rent and other sums which may become due to Landlord under this Lease.

Section 6.02 - Landlord Not Liable for Damage. Landlord shall not be liable for injury and/or damage to persons or property or for any loss suffered by Tenant or its business, regardless of how caused, arising out of, but not limited to: (a) theft; (b) fire, explosion or falling plaster; (c) water flooding or dampness from rain, leaks from roof or any part of the Premises, street or subsurface or any source whatsoever or from the bursting, overflowing or leaking of sewer lines, steam pipes or appliances or from the heating or air-conditioning systems or plumbing fixtures; (d) alterations, replacements and/or other work performed to comply with governmental or quasi-governmental requirements regarding freon, any Hazardous Materials, or otherwise; or (e) electric wires or from gas or odors or fire or other damage and/or injury caused in any manner whatsoever or (f) any other cause whatsoever unless caused by or due to the gross negligence or willful misconduct of Landlord, its agents, servants, or employees. Landlord shall not be liable for any such injury or damage caused by other tenants, persons in the Premises, occupants of adjacent property to or of the Center, or the public, or caused by operations in construction of any private, public or quasi-public work. All property of Tenant kept or stored on the Premises shall be so kept or stored at the sole risk of Tenant and upon request Tenant shall indemnify Landlord and its agents against any claims arising out of damage or loss to any such property, the indemnity herein is subject to F.S. 768.28 if arising out of negligence. Any indemnification arising out of contract herein shall be limited by the insurance of Tenant. Tenant hereby waives the right to claim and recover against Landlord for any loss or damage insurable by Tenant whether or not Tenant has such insurance in place.

ARTICLE VII INDEMNITY, HAZARDOUS MATERIALS AND TENANT'S INSURANCE

Section 7.01 - Indemnity. Tenant agrees that it will, to the extent permitted by Florida law, indemnify

Landlord and its agents against all liabilities, costs and expenses (including reasonable attorneys' fees and, if suit is brought, such fees and court costs through appeals and collection efforts) resulting from, arising out of or in any way connected with: (a) any accident or other occurrence in the Premises and/or on adjacent portions of the Common Area causing loss or injury to any person (including Landlord and Tenant and their respective agents, employees, licensees, invitees and contractors) and/or property (including the Premises); (b) the use and occupancy by Tenant and/or any third party of all or any part of the Premises or any act or omission of Tenant and/or such third party or their respective agents, employees, licensees, invitees or contractors, whether inside or outside of the Premises; (c) violation of any law or ordinance, whether occasioned by the act or omission of Tenant or those holding under or through Tenant; and (d) failure of Tenant or those holding under or through Tenant in any respect to comply with and perform all of the requirements and provisions of the Lease and related documents. Further, however, such indemnification is subject to F.S. 768.28 and Tenant's insurance coverage.

Section 7.02 - Tenant's Insurance.

A. Tenant agrees, at its expense, to procure and continue in force comprehensive general liability insurance with broad form property damage coverage, written on an "occurrence" (rather than a "claims made") basis and without any deductible, covering all claims for injuries to persons and damage to property in or upon the Premises and for adjacent areas, including all damage from signs, glass, awnings, fixtures or other appurtenances now or hereafter in or upon the Premises, and insuring the indemnity agreement contained in this Article. Such Insurance at all times shall be in the combined single limit amount of not less than \$2,000,000.00 per occurrence. All policies of insurance shall provide that Landlord shall receive at least thirty (30) days prior written notice of the change, termination or cancellation of any such insurance policy and shall name Landlord, its managing agent and designee(s) as additional insureds and loss payees. Such insurance shall be written with a company or companies acceptable to Landlord and authorized to engage in the business of general liability insurance in the State of Florida (it being understood that Landlord will not approve any company with a rating less than "A-Class XII" in the then-current edition of Best's Key Rating Guide) and there shall be delivered to Landlord customary insurance certificates, or at Landlord's option duplicates of the policy or policies, evidencing such insurance is paid in full. If Tenant fails to furnish evidence of such insurance, or if Landlord receives notice that any of Tenant's insurance has been or will be canceled, terminated, or materially changed or suspended, Tenant will be in default under this Lease and (without waiving such default) Landlord may obtain such insurance as Tenant is required to maintain hereunder and the premiums for such insurance, together with an administrative charge of \$100.00 on such amounts advanced to pay said insurance and interests at the rate of Eighteen (18%) percent per annum shall be deemed additional rent to be paid by Tenant to Landlord on request. Said administrative charge will also be payable on request and as additional rent if Landlord elects to give Tenant written notice of any actual or threatened cancellation, termination, material change or suspension of any other insurance required to be maintained by Tenant hereunder.

B. Whenever Tenant is making or having others make any installations, alterations or repairs in or to the Premises, workers' compensation and comprehensive general liability insurance with broad form property damage coverage, all in amounts and with companies satisfactory to Landlord, and naming Landlord, its managing agent and designee(s) as additional insureds and in the case of Landlord an additional loss payee, will be maintained by Tenant and its contractor(s) engaged in the performance of the work, and before proceeding with the work insurance certificates acceptable to Landlord must be furnished to Landlord.

C. If by reason of changed economic conditions (as reflected by increases to the Consumer Price Index) or Tenant's use of the Premises Landlord determines that the insurance amount specified in Section 7.02(A) of this Article is inadequate, upon request from time to time Tenant will increase the same to such amount as Landlord may require. In the case of changed economic conditions, Landlord may request an increase in insurance coverage equal to the percentage increase in the CPI from the commencement of the Lease to the

time of the request.

D. Tenant shall obtain, at Tenant's expense, and maintain in full force and effect during this Lease, a standard form policy of fire insurance with standard form of extended form policy of fire insurance with standard form of extended coverage endorsement covering the fair market value of all stock and trade, trade fixtures, interior improvements, equipment and other personal property located in the Premises. Tenant shall replace, at its sole cost and expense, any and all plate and other glass, damaged or broken from any cause whatsoever in and about the Premises. Tenant shall procure and maintain, at its own expense, insurance covering all plate and other glass damaged or broken from any cause whatsoever in and about the Premises for and in the name of Landlord. Tenant acknowledges Landlord shall have no obligation to carry insurance of any kind on Tenant's furniture, furnishings, fixtures or equipment and Landlord shall not be obligated to make any repairs thereto or to replace the same.

E. All insurance provided for in this Lease must be effected under policies in form and substance satisfactory to Landlord. Tenant will deliver to Landlord a certificate of each policy, bearing a notation evidencing payment of the premium, or accompanied by other evidence reasonably satisfactory to Landlord of such payment.

F. Tenant acknowledges that its obligation to fully and timely effect the insurance required of it hereunder and to deliver the requisite insurance certificates to Landlord is a material inducement for Landlord to enter into this Lease. Therefore, Tenant agrees that, without in any way limiting Landlord's other rights and remedies under this Lease, Tenant will not be entitled to enter, use and/or take possession of the Premises or any part thereof unless such obligations are fully complied with. However, the foregoing will not otherwise affect this Lease or the Term or Tenant's obligations hereunder, including Tenant's obligation to pay the rent and all other sums herein provided for. Without limiting (and notwithstanding) any other provision of this Lease, if at any time any of the insurance required to be maintained by Tenant hereunder is canceled and not immediately replaced with like insurance, without any hiatus in coverage, or if such insurance is not obtainable, that fact will constitute a material default under this Lease beyond the applicable grace period and without the requirement of notice from Landlord, entitling Landlord to the same rights and remedies if such default were with respect to the non-payment of the fixed minimum rent reserved herein (including termination of this Lease).

Section 7.03 - Landlord's Security Systems. From time to time Landlord may install electronically controlled/monitored security systems for the Premises. Landlord assumes no responsibility and/or liability for any loss or damage to persons or property sustained in any instance when a security system, whether installed by Landlord or Tenant, malfunctions or fails to function for any reason whatsoever, and Tenant and any party claiming under Tenant shall file no claim against Landlord because of damages sustained as a result of the failure or malfunctioning of any such security system or Landlord electing not to install such a security system. The exculpation described in this paragraph shall specifically include any loss sustained in an instance where the security system malfunctions or fails to perform due to the failure of any telephone system, electrical system or other service that may be made available to Tenant by Landlord.

Section 7.04 - No Asbestos or Hazardous Materials.

A. Tenant shall not use nor permit in, on or about the Premises any product, material, equipment or other item of any nature whatsoever which contains asbestos in any form.

B. Tenant shall not cause or permit any "Hazardous Materials" (as defined below) to be brought upon, kept or used in or about the Premises by Tenant or any subtenant or any of their respective agents, employees, contractors, licensees or invitees. Without limiting the provisions contained in Section 7.01, if Tenant breaches the obligations stated in the preceding sentence, or if the presence of any Hazardous Materials in or

about the Premises caused or permitted by Tenant results in any contamination of the Premises, or if contamination of the Premises by any Hazardous Materials otherwise occurs for which Tenant is legally liable, then Tenant shall indemnify Landlord and its agents against all claims, judgments, damages, penalties, fines, costs, liabilities or losses including diminution in value of the Premises, damages arising from any adverse impact on marketing of space within the Mall, and sums paid in settlement of claims, attorneys' fees, environmental audits, consultant fees and expert fees which arise during or after the Term as a result of such breach and/or contamination. This indemnification includes, but is not limited to, costs incurred in connection with any investigation of site conditions and any clean-up, remedial, removal or restoration work required by any Landlord or governmental or quasi-governmental authority because of any Hazardous Materials being present in the soil or ground water on or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Materials on the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant shall promptly take any and all actions at its sole cost and expense as are necessary to return the Premises to their condition existing prior to the introduction of such Hazardous Materials to the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises.

As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any governmental or quasi-governmental authority; such term includes, but is not limited to, any material or substance which is (a) petroleum, (b) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (c) defined as a "hazardous waste" pursuant to Section 10004 of the Federal Resource Conservation and Recovery Act, (12 U.S.C. Section 6903), or (d) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601).

For the purpose of determining compliance with this Section, Tenant hereby grants Landlord and its agents the right to cause or conduct testing and/or examination of the Premises to be made from time to time at Tenant's sole cost and expense, payable on request and as additional rent.

Notwithstanding (and without limiting) any other provision of this Lease, a breach or default by Tenant under this Article will constitute a material default under this Lease beyond any applicable grace period and without the necessity of notice from Landlord to Tenant regarding such default, entitling Landlord to the same rights and remedies as if such default were with respect to the non-payment of the fixed minimum rent reserved herein (including termination of this Lease).

ARTICLE VIII TENANT'S WORK ON PREMISES

Section 8.01 - Mechanic's Lien. Prior to Tenant performing any construction, repairs, improvements or other work in, on or about the Premises for which a lien could be filed against the Premises, the building where the Premises are located or the Center, Tenant agrees that if requested by Landlord, Tenant shall immediately execute, acknowledge and deliver to Landlord, for recording purposes, a Memorandum of Lease, or any other document authorized or acceptable under the laws of the State of Florida, whenever enacted, containing therein language deemed necessary by Landlord to preclude the filing of mechanic's or construction liens against Landlord's interest in the Center or the Premises. Landlord and Tenant agree that Tenant will not have the authority to create, suffer or allow to remain any lien for labor or materials on the Center or the Premises against Landlord's interest therein. All contractors, subcontractors, materialmen, mechanics, laborers and others contracting with Tenant, and/or any subtenant of Tenant and/or any other occupant(s) of the Premises for the construction, installation, alteration or repair of any improvements to the Premises are hereby charged

with notice that they must look only to Tenant and to Tenant's interest in the Premise to secure the payment of any charges for work done and/or materials furnished at the Premises. Notwithstanding the foregoing, if, for any reason any mechanic's, construction, or other lien shall be filed against the Premises or any other part of the Center, purporting to be for labor or material furnished or to be furnished at the request of Tenant or anyone claiming under Tenant, then Tenant shall, at its sole cost and expense, cause such lien to be discharged of record by payment, bond or otherwise as allowed by law, within ten (10) days after the filing thereof. If Tenant shall fail to cause the lien to be discharged of record within such ten (10) day period, Tenant shall be in default under this Lease and (without waiving such default) Landlord, in addition to any other rights and remedies it may have under this Lease may, but shall not be obligated to, cause such lien to be discharged by payment, bond or otherwise, without investigation or other inquiry to the validity thereof or as to any offsets or defenses thereto, and Tenant shall, within ten (10) days after request, reimburse Landlord for all amounts paid and incurred, including attorneys' fees, and interest thereon, at the rate of eighteen percent (18%) per annum or such higher rate as may be permitted by law from the respective dates of Landlord's payments; Tenant also shall otherwise indemnify Landlord and its agents against any claim or damage resulting therefrom.

ARTICLE IX PARKING AND DELIVERIES

Section 9.01 - Parking Area.

A. Landlord shall maintain at all times during the term of this Lease the parking area of the Mall. The parking area shall be for the joint use and mutual benefit of all tenants in the Mall and their customers, employees, visitors and invitees. The parking area shall be kept in good order and repair and reasonably free of obstruction by the Landlord.

B. Landlord may designate an area in the parking area for the parking of employee's vehicles, and in such case employees of the Tenant shall be required to park their vehicles in only the designated area. Landlord shall have the right to monitor the employee parking and to enforce the requirements of this paragraph, including, without limitation, the towing of any improperly parked employee vehicles.

Section 9.02 - Deliveries. Tenant agrees that trailers and trucks shall deliver merchandise only at times and in such manner that do not interfere with operation of the Center.

ARTICLE X CONDUCT OF BUSINESS BY TENANT

Section 10.01 - Use of Premises. Tenant shall continuously occupy and use the Premises exclusively for **administrative offices for the Village of Wellington** and for no other purpose whatsoever.

Section 10.02 - Restrictions on Use. Tenant shall not use or permit the Premises to be used for any purpose other than as set forth above and further covenants and agrees to promptly comply with all statutes, ordinances, rules, orders, regulations and requirements of federal, state, county and city governments regulating the use by Tenant of the Premises. The restrictions set forth in this paragraph shall extend to all agents and employees of the Tenant.

**ARTICLE XI
MAINTENANCE AND REPAIRS**

Section 11.01 - Maintenance and Repairs by Tenant.

A. Tenant shall, at its own cost and expense, keep and maintain the Premises and every part thereof in good order and repair except that portion of the Premises to be repaired by Landlord. Without limiting the foregoing, Tenant agrees to keep in good order and repair, and to maintain and replace as needed, all fixtures pertaining to heating, air conditioning (including compressors, fans and ducts), ventilation, water, sewer, electrical and sprinkler systems resulting from Tenant's misuse. Tenant shall obtain at its sole cost and expense, a service contract for repairs and maintenance of the heating and air-conditioning system for the Premises that conforms to the warranty requirements of said system. Tenant agrees to return the Premises to Landlord at the expiration or sooner termination of this Lease, in as good a condition and repair as when first received, reasonable wear and tear excepted. Following the expiration or earlier termination of this Lease and prior to return of Tenant's security deposit, an HVAC maintenance company acceptable to Landlord that states the Premises' heating, ventilation, and air conditioning systems are operating properly and have not suffered from neglect must be provided to Landlord. Failure by Tenant to (a) provide Landlord with an HVAC inspection report; and (b) for the HVAC report to state that the Premises' heating, ventilation and air conditioning systems have been damaged as a result of neglect shall permit the Landlord to allocate the security deposit to obtain the inspection report or repair or replace any damaged equipment pursuant to such report. All damage or injury to the Mall, Premises or the common areas caused by the act or negligence of Tenant, its agents employees, licenses, invitees or visitors shall be promptly repaired by Tenant at Tenant's sole cost and expense and to the satisfaction of Landlord or, at Landlord's option, repaired by Landlord at Tenant's expense. Landlord may make such repairs which are not promptly made by Tenant and charge Tenant for the cost thereof and Tenant hereby agrees to pay such amounts on demand as Addition Rent. Tenant shall, at its sole cost and expense, arrange for any necessary exterminating of insects, vermin, rodents and other pests by qualified and duly licensed professionals.

B. If Tenant refuses or neglects to properly maintain or repair the Premises as required here within a reasonable time after written demand by Landlord, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures and/or other property, or for the loss of business occasioned by reason thereof. Landlord shall not be required to give Tenant notice for those repairs reasonably deemed by Landlord to be emergency in nature. Upon completion of all repairs by Landlord pursuant to this section, Tenant shall pay within twenty (20) days after demand by Landlord, the cost of such repairs plus interest at the rate of eighteen percent (18%) per annum from the date of completion of the repairs by the Landlord until payment.

D. Tenant shall make all repairs in a good and workmanlike manner consistent with the Florida Building Code.

Section 11.02 - Maintenance and Repairs by Landlord.

A. After receipt from Tenant of written notice of the need therefore, Landlord, at its expense, will make necessary repairs to (a) all structural parts of the Premises, both exterior and interior; (b) to the extent furnished and installed by Landlord, and to the extent not serving the Premises exclusively, at its expense, all concealed water, sewer, electric and other utility lines and sprinkler systems, if any; (c) to the extent furnished and installed by Landlord and to the extent not serving the Premises exclusively at its expense, all mechanical and building equipment; and (d) the center's common areas, including lobbies, customarily used by Tenant.

B. Notwithstanding the foregoing, however, Landlord will be released of its obligation under this

Paragraph if anything to be repaired by Landlord is disturbed by the acts, misuse, improper conduct, omission or neglect of Tenant, its subtenants, agents, servants, employees, contractors, invitees or licensees (collectively, for convenience "Tenant's Agents") or any improvements or changes in or to the Premises made by Tenant. Landlord will have no liability to Tenant by reason of making any repairs required or permitted to be performed by Landlord under this Lease, or required by law, provided that (except in the case of an emergency) Landlord will do the work in such manner as will not materially interrupt Tenant's business operations. However, the foregoing will not require Landlord to do any such work other than during normal business hours.

C. Landlord agrees to keep and maintain in good order and repair only the structural components of the roof, structural components and exterior walls (exclusive of all signs, doors, windows, glass and plate glass of the Premises). If the need for any such maintenance and repairs are caused in part or in whole by the act, neglect, fault or omission of duty by Tenant, its agents, servants, employees or invitees, or any damage is caused by breaking and entering, Tenant shall pay to Landlord the actual cost of such maintenance and repairs. Landlord grants to Tenant exclusive contract of the Premises and shall be under no obligation to inspect the Premises. Tenant shall at once report in writing to Landlord any known defective condition which Landlord is required to repair pursuant to this Paragraph. Tenant's failure to report to Landlord any such condition or defect shall make Tenant responsible to Landlord for any liabilities, including attorneys' fees and costs incurred by Landlord and any increase in the cost of repairs or insurance due to any failure or delay in reporting by Tenant. Except as herein provided regarding casualty loss, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Mall or the Premises or in or to fixtures contained therein. Tenant hereby waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

Section 11.03 - Alterations. Tenant will make no alterations, changes, additions or improvements in or to the Premises during the term without the written consent of Landlord, which consent Landlord may grant, condition, and/or withhold in its reasonable discretion. Landlord's prior consent will not be required for any alterations, additions or improvements (for convenience in any such case, "Alterations") in the Premises, the cost of which will not exceed Five Hundred (\$500.00) Dollars and which do not affect structural portions of the Center or Premises. Alterations in and to the Premises consented to by Landlord shall be made at Tenant's expense, and Landlord's consent shall only be forthcoming provided each of the following conditions is satisfied at Tenant's expense: (a) prior to commencement of any such work: (i) Tenant shall submit to Landlord for its approval plans and specifications in detail reasonably satisfactory to Landlord as well as a certification from Tenant's licensed contractor or architect that none of the proposed work will adversely affect the structure of the Building or its service systems (including the water, electric, heating, air conditioning and plumbing systems); (ii) Tenant will deliver to Landlord an original certificate of insurance evidencing to Landlord that Tenant and its contractors have obtained the following insurance coverage in connection with the work: single-limit comprehensive general liability in an amount not less than \$1,000,000 per occurrence, including broad form property damage coverage without deductible, written on an "occurrence" rather than a "claims made" basis; workers' compensation and employer's liability coverage covering all employees of the contractors and any subcontractors. All such insurance will be effected with insurers licensed to do business in the State of Florida and having a rating not less than "A-/Class XII" in the then-current edition of Best's Key Rating Guide. Landlord and such others as Landlord may designate will be named in each instance as additional parties insured and less payees and no change or termination of any coverage will be effective without at least thirty (30) days' prior written notice from the carrier(s) to Landlord (and the aforesaid certificate of insurance delivered to Landlord will so specify); and (iii) Tenant will deliver to Landlord copies of all requisite permits, approvals and certificates, and, upon completion, such lien waivers, satisfactions, Certificate of Occupancy or completion, and final contractor's affidavits as Landlord may request; (b) no amendments or additions to Tenant's plans and specifications will be made without Landlord's prior written consent, which Landlord agrees will not be unreasonably withheld as to minor amendments or additions; and

(c) the standards of quality, utility and appearance of the proposed alterations will conform to the then standards for the building. Tenant agrees that all of such work will be done in a good and workmanlike manner, in compliance with this Lease, the advice of all insurance bodies, and all applicable laws, ordinances, rules and regulations (including rules and regulations promulgated by Landlord) then in effect, and with the least possible disturbance to other occupants of the building. Tenant will reimburse Landlord on request as additional rent for any expenses incurred by Landlord on account of Tenant's failure to comply with any of the foregoing. Tenant will promptly pay all costs and expenses of such alterations, which immediately upon installation will become Landlord's property, and will not do or fail to do any act which may render the building, the Center, the Premises or any property in the Premises liable to any mechanic's lien or other lien chattel mortgage, conditional bill of sale, title retention agreements or other charges of any kind which may be incurred by or become chargeable against and, the building, the center, the Premises or any property in the Premises, by reason of any work done or claimed to have been done, or any materials furnished, to the Premises in connection with such alterations. At all times during the making of such alterations, Landlord will be entitled to have its representatives present on the site for super-vision and inspection purposes and such representatives will have unrestricted access to all parts of the Premises. Such presence, inspection and/or supervision, however, will not impose any obligation whatsoever on Landlord or its representatives, nor render Landlord or its representatives liable in any way for improper work or faulty materials. Tenant agrees that it will not, either directly or indirectly, use any contractors, labor or materials if such use might create difficulty with other labor then engaged by Tenant, Landlord or others in the construction, operation or maintenance of the building or the Center or any part thereof. Landlord makes no representation as to the design or feasibility of efficiency of Tenant's work, or whether Tenant will be able to obtain the required licenses, permits, approvals and certificates. If the operation of the building, the center of any of its equipment is in any way adversely affected by reason of Tenant's work, Tenant at its expense, will promptly remove the cause thereof upon Landlord's request. Additionally, Tenant shall be responsible for first obtaining all necessary approvals, consents, including, but not limited to, any governmental quasi-governmental or property owner's association approvals when applicable. All leasehold improvements and betterments, including light fixtures, heating and air-conditioning equipment and other construction to be done by Tenant shall, when installed, attach to the freehold and become and remain the property of Landlord; provided, however, that Landlord shall have the right to require Tenant to remove any such improvements and betterments. In such case, Landlord shall give notice to Tenant prior to lease termination, or within thirty (30) days thereafter, to remove the subject items. Tenant shall promptly do so, at its sole cost and expense, and repair any damage caused by such removal. If Tenant fails to do so, then Landlord may effect such removal and repairs at Tenant's expense, plus interest at the rate of eighteen percent (18%) per annum until paid by Tenant in full. All removable trade fixtures, signs, carpeting and drapes shall remain the property of Tenant, subject at all times to Landlord's lien for rent and other sums which may become due to Landlord under this Lease. Any approval or consent given by Landlord pursuant to this paragraph may be given subject to conditions or requirements imposed by Landlord, including, but not limited to, conditions regarding the times and manner in which work will be conducted.

Section 11.04 - Waiver of Claims. Neither Landlord nor Landlord's agents nor servants shall be liable, and Tenant waives any and all claims for damage to persons or property sustained by Tenant or any occupant of the Mall resulting from the Premises or any part of the Mall or any equipment or appurtenances, or resulting from any accident in or about the Premises or the Mall, or resulting directly or indirectly from any act or neglect of any tenant or occupant or of any other person, including Landlord's agents and servants, unless due to Landlord's gross negligence. This paragraph shall apply especially, but not exclusively to, flooding and damage caused by refrigerators, sprinkling devices, roof leaks, air conditioning apparatus, water, frost, steam, excessive heat or cold, falling plaster, broken glass, sewage, gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures and shall apply equally whether any such damage results from the act or neglect of Landlord or of other tenants, occupants or servants in the Mall or of any thing or circumstance above mentioned or referred to, or any other thing or circumstance whether of a like nature or of a wholly different nature. All property belonging to Tenant or any occupant of the Premises shall be there at the risk of Tenant and Landlord shall not be liable for any damages thereto or theft or misappropriation thereof.

Section 11.05 - Cleanliness and Waste. Tenant shall keep the Premises and the walks and areas directly in front of and directly behind the premises at all times in a neat, clean and sanitary condition, free from waste or debris and shall neither commit nor permit any waste or nuisance thereon.

**ARTICLE XII
TENANT'S ADDITIONAL AGREEMENTS**

Section 12.01 - Tenant's Affirmative Obligations. Tenant agrees, at its expense, to:

- A. **LIGHT DISPLAY WINDOWS:** Keep the display windows, canopies, signs, and sign parapet area, if any, in and/or on the Premises electrically lighted from dusk until 10:00 P.M. on all days during which the Centers open for business and during such other periods as Landlord may reasonably prescribe;
- B. **KEEP PREMISES CLEAN:** Keep the Premises (including exterior and interior portions of all windows, doors and all other glass) in a neat and clean condition;
- C. **KEEP PREMISES ATTRACTIVE:** Maintain the Premises and Tenant's personal property therein as an attractive shopping area in accordance with the general character of the Center;
- D. **NON-SELLING SPACE:** Used for office, clerical or other non-selling purposes only such space in the Premises as is reasonably required for Tenant's business therein, and not to perform therein any functions for any other Premises of Tenant or for any other person or entity;
- E. **LABOR REGULATIONS:** Take no action which would violate Landlord's union or non-union contracts, if any affecting the Center, nor create or permit any work stoppage, picketing, labor disruption or dispute or any interference with the business of Landlord or any tenant or occupant in the Center or with the rights and privileges of any customer or other person(s) lawfully in and upon the Center, nor cause any impairment or reduction of the good-will of the Center;
- F. **COMPLY WITH LAWS, ETC.:** Promptly comply with and conform to (a) the current and future recommendations and requirements of Landlord's insurers, and (b) all laws, statutes, ordinances, rules and regulations of governmental and quasi-governmental authorities or property owner's association (such as, but not limited to zoning, building, environmental, garbage/rubbish/waste-recycling, freon storage/removal and replacement, including, if applicable, machinery and equipment, disposal, fire and safety laws and codes) now or hereafter affecting the Premises, including those requiring the making of structural changes to the Premises;
- G. **PAY TAXES:** If applicable, pay before delinquency all taxes, assessments and public charges levied, assessed or imposed on Tenant's business or Tenant's improvements, betterments, fixtures, furnishings or equipment in the Premises;
- H. **PAY LICENSE FEE:** Pay when and as due all license fees, permit fees and charges of a similar nature for any business or undertaking conducted in the Premises;
- I. **TENANTS' FIXTURES:** Operate its business in the Premises with adequate equipment and trade fixtures which shall, when initially installed, be functional, sufficient and of first class quality and workmanship;
- J. **GARBAGE:** Handle and dispose of all rubbish, garbage and waste from Tenant's operations in accordance with regulations established by Landlord and/or governmental or quasi-governmental authorities

and not permit the accumulation (unless in concealed metal containers) or burning of any waste, rubbish or garbage in, on or about the Premises or within the boundaries of the Center. Without limiting the foregoing, Tenant agrees that no waste, rubbish or garbage of any nature will be permitted to be placed on any part of the Common Area, nor will Tenant be permitted to remove any of the same through any part of the Common Area in the covered mall portion of the Center;

K. HEAT/AIR CONDITION THE PREMISES: Shut off all exhaust fans, if any, servicing the Premises at all times when the Premises are closed. If the Premises front on the enclosed mall, Tenant shall maintain positive air pressure so as to prevent the drawing of heated or cooled air from the enclosed mall and shall keep the Premises heated or air conditioned as the case may be, to at least the same minimum temperature (in the case of air conditioning) as Landlord shall attempt to maintain in such covered mall portion of the Center;

L. CLEANING PROGRAM: Participate in the window cleaning and exterminating program, if any, that now or hereafter may be established by Landlord for all or substantially all other tenants in the Center or the building in which the Premises are located;

M. RULES AND REGULATIONS: Obey and observe (and, as applicable, compel its individuals, officers, employees, contractors, licensees, invitees, subtenants, concessionaires and all others doing business with it to obey and observe) all rules and regulations established by Landlord from time to time. Any rule or regulation promulgated by Landlord under this Article or any other provisions of this Lease will be final and binding on Tenant upon delivery of a copy thereof to Tenant. Notwithstanding any contrary provision hereof, Landlord will have the right to promulgate rules and regulations which do not apply uniformly to all tenants of the Center if Landlord deems that it has a reasonable basis for doing so. By way of illustration and not limitation, it will be deemed that Landlord has a reasonable basis for promulgating rules and regulations which control the flow of customer traffic to the Premises of any non-retail tenants;

Section 12.02 - Tenant's Negative Obligations. Tenant agrees that it shall not at any time without first obtaining Landlord's written consent in each instance:

A. NOT ABANDON PREMISES: Abandon or vacate the Premises;

B. NOT CHANGE EXTERIOR ARCHITECTURE: Change (whether by alteration, replacement, rebuilding or otherwise) the exterior color and/or architectural treatment of the Premises or of the building in which the same are located or any part thereof;

C. NOT MISUSE PLUMBING FACILITIES: Use the plumbing facilities for any purpose other than that for which they were constructed, or dispose of any garbage or other foreign substance therein, whether through the utilization of so-called "disposal" or similar units, or otherwise;

D. LIENS: Subject any fixtures, furnishings or equipment which are in, on, or affixed to any mortgages, liens, conditional sales agreements, security interests or other encumbrances;

E. NOT DAMAGE THE PREMISES: Perform any act or carry on any practice which may damage, mar or deface the Premises or any other part of the Center;

F. NO VENDING MACHINES: Without the prior consent of Landlord, operate in the Premises or in any other part of the Center any coin or token operated vending machine or similar device (including pay telephones, pay lockers, pay toilets, scales, amusement devices and machines for the sale of beverage, foods, candy, cigarettes or other merchandise and/or commodities);

G. NO AWNINGS: Install any awnings in or on the Premises which are visible to public view outside

the Premises;

H. WINDOW CLEANING AND JANITORIAL SERVICES: Permit window cleaning or other exterior maintenance or janitorial services in and for the Premises to be performed except by such reputable person(s) who are reasonably acceptable to Landlord;

I. NOT EXCEED FLOOR LOAD: Place a load on any floor in the interior delivery system, if any, or in the Premises exceeding the floor load per square foot which such floor was designed to carry, nor have installed, operated or maintained therein any heavy item of equipment except in such manner as to achieve a proper distribution of the weight;

J. NOT EXCEED ELECTRICAL LOAD: Install, operate or maintain in the Premises any electrical equipment which will overload the electrical system therein, or any part thereof, beyond its reasonable capacity for proper and safe operation as determined by Landlord in light of the over-all system and requirements therefor in the Center, or which does not bear Underwriter's Laboratories approval;

K. NOT PERMIT ODORS, NOISE, ETC.: Cause or permit any vibration, noise, odor or other effect that is undesirable to Landlord, its other Tenants or Invitees, in its sole discretion, to emanate from the Premises or any machine or other installation therein, or otherwise cause or permit the Premises to constitute a nuisance or annoyance or to interfere with the safety, comfort or convenience of Landlord or any of the other occupants of the Center or their customers, agents or invitees or any other persons lawfully in or upon the Center. Without limiting the foregoing, Tenant will not place any loudspeaker or other sound amplifying device, whether for music or voice, on the exterior of the Premises or in any part of the Common Area. Upon notice by Landlord to Tenant that any of the aforesaid is occurring, Tenant shall immediately remove or control the same to Landlord's satisfaction. In the event Tenant fails to do so, the Landlord may remedy the subject problem, and the cost of so doing, including any legal fees or costs incurred by Landlord shall be paid by Tenant as additional rent. Said sum shall be paid by Tenant to Landlord within five (5) days of receipt of Landlord's statement. If not so timely paid, the sum shall accrue interest at the rate of eighteen percent (18%) per annum until paid in full.

L. NOT INTERFERE WITH INSURANCE: Use or occupy the Premises, or do or permit anything to be done in the Premises, which in any manner could (a) impair the ability of Landlord and/or Tenant to obtain at standard rates any insurance required or desired, or (b) invalidate or increase the cost to Landlord of any existing insurance;

M. DELIVERIES: Make or permit any deliveries to the Premises except in accordance with the rules and regulations set forth and amended by Landlord from time to time, as needed. Tenant agrees that Tenant and its deliverymen will cause all deliveries to be made and completed as promptly as possible and with the least possible disturbance to Landlord and other tenants of the Mall and their respective agents, employees, licensees, contractors, patrons and other invitees.

ARTICLE XIII DESTRUCTION

Section 31.01 - Destruction by Fire or Casualty

A. In the event the Premises shall be damaged by fire, explosion, windstorm or any other casualty, Landlord shall repair such damages and put the Premises in the condition as existed at the time of the casualty as rapidly as reasonably possible.

B. Notwithstanding any other provision of this Section to the contrary, if the Premises shall be damaged

during the last two (2) years of the term, and such damage shall be to the extent of more than twenty-five percent (25%) of the value of the Premises at the time of such damage, then Landlord may, at its election upon notice to Tenant, within ninety (90) days after such damage, terminate this Lease, upon at least fifteen (15) days prior written notice thereof, at the expiration of which time this Lease shall be terminated.

C. Tenant covenants that it will give notice to Landlord of any accident or damage, whether such damage is caused by insured or uninsured casualty, occurring in, on, or about the Premises within twenty-four (24) hours from the time of said accident or damage. In the event Tenant breaches its covenant set forth in this Paragraph C, Landlord in addition to all of its other rights and remedies under this Lease, at law or in equity, shall be relieved, at its option, of any of its obligations under this Section.

Section 13.02 - Destruction of Mall. In the event that fifty percent (50%) or more of the rentable area of the Mall shall be damaged or destroyed by fire or other cause, notwithstanding the fact that the Premises may be unaffected by such fire or other cause, Landlord shall have the right, upon providing written notice to Tenant within sixty (60) days from and after said occurrence, to elect to cancel and terminate this Lease. Upon giving such notice to Tenant, the term of this Lease shall expire by lapse of time upon the thirtieth (30th) day after such notice is given, and Tenant shall vacate the Premises and surrender the same to Landlord.

Section 13.03 - Excessive Costs of Repair. Notwithstanding anything herein contained to the contrary, if the proceeds of Landlord's insurance recovered or recoverable as a cost of replacement of the Premises and the building in which they are located are insufficient to pay for necessary repairs, or the Premises or said building shall be damaged as a result of a risk which is not covered by Landlord's insurance, Landlord shall have the right, upon providing written notice to Tenant within ninety (90) days after said occurrence, to elect to cancel and terminate this Lease. Upon the giving of such notice to Tenant, the term of this Lease shall expire by lapse of time upon the thirtieth (30th) day after such notice is given, and Tenant shall vacate the Premises and surrender the same to Landlord.

ARTICLE XIV POSSESSION AND SURRENDER

Section 14.01 - Possession by Tenant. Landlord covenants and warrants that it has full right and authority to enter into this Lease for the full term hereof. Landlord further covenants that Tenant, upon paying the rents provided for herein and upon performing the covenants and agreements of this Lease to be performed by Tenant, will have, hold and enjoy the quiet possession of the Premises.

Section 14.02 - Surrender of Premises. Tenant agrees to surrender the Premises to Landlord at the expiration or sooner termination of the term in as good condition as they were at the commencement of Tenant's occupancy, ordinary wear and tear, and damage by fire and taking by condemnation or eminent domain proceedings excepted. Whether made by Landlord or Tenant, all alterations, fixtures and improvements, except only Tenant's office furniture, its other personal property and its trade fixtures which are readily removable without injury to the Premises, will be and remain a part of the Premises at the end of the term, unless Landlord, by written notice given to Tenant at least ten (10) days before the end of the term, elects to have all or any of the same removed, in which case Tenant will remove the same at its expense, and repair and restore the Premises failing which the same will be deemed abandoned and at the option of Landlord will become Landlord's property and/or be removed, stored, sold or otherwise disposed of at Tenant's expense, plus interest at the rate of 18% per annum. In the event of any such sale the proceeds will belong to Landlord without any obligation to account to Tenant therefor. In all events, Tenant will promptly restore all damage caused in connection with any removal provided for by this Paragraph. Tenant will pay to Landlord upon request all damages that Landlord may suffer on account of Tenant's failure to surrender possession as and when aforesaid and will indemnify Landlord against all liabilities, costs and expenses (including attorneys' fees and court costs in instituting, prosecuting and/or defending any action or proceeding through appeal)

arising out of Tenant's delay in so delivering possession, including claims of any succeeding tenant. No offer of surrender of the Premises, by delivery to Landlord or its agent of keys to the Premises or otherwise, will be binding on Landlord unless accepted by Landlord, in writing, as an effective surrender of the Premises. Without limiting Landlord's rights and remedies, if Tenant holds over possession of the Premises beyond the end of the term, during the holdover period Tenant will be a Tenant at sufferance at a monthly use and occupancy charge equal to double the amount of the Monthly Rent and Additional Rent payable for the last month of the term.

ARTICLE XV UTILITIES

Section 15.01 - Payment for Utilities. Tenant agrees immediately upon obtaining access to the Premises to contract for, in Tenant's own name, and to pay for all utility service rendered or furnished to the Premises, including heat, water, gas, electricity, sprinkler charges, fire line charges, sewer rental, sewage treatment facilities and the like, together with all taxes or other charges levied on such utilities and governmental charges based on utility consumption, standby utility capacity, or potential utility use. If any such utilities are not separately metered or assessed or are only partly separately metered or assessed and are used in common with other tenants of the Center, Tenant will pay to Landlord an apportionment of such charges for utilities used in common, based on the Floor Area leased to each tenant using such common facilities in addition to Tenant's payments of the separately metered charges. In the alternative, Tenant may, upon request to Landlord and upon Landlord's prior written consent if granted, provide separate meters at Tenant's expense in accordance with the requirements for any Tenant's work as provided for in Article VIII of this Lease. If Landlord shall supply any such services, Tenant will purchase same from Landlord at charges not in excess of the charges for the service in question made by any public utility corporation or governmental or quasi-governmental agency supplying such utilities in the area. Any such charges for service supplied by Landlord or charges for utilities which may be rebilled by Landlord, shall be due and payable as additional rent, within ten (10) days after billings therefor are rendered to Tenant. In no event shall Landlord be liable for the quality, quantity or failure or interruption of any such services to the Premises.

Section 15.02 - Landlord's Discontinuance of Utilities. Landlord may, with notice to Tenant, or without notice in the case of an emergency, cut off and discontinue gas, water, electricity and any or all other utilities whenever such discontinuance is necessary in order to make repairs or alterations, or when Tenant's payment therefor, or any other rents or charges due pursuant to this Lease, are delinquent. No such action by Landlord shall be construed as an eviction or disturbance of possession or as an election by Landlord to terminate this Lease, nor shall Landlord or its agents be in any way responsible or liable for such action and Tenant hereby expressly waives and releases all claims against Landlord and its agents therefor.

Section 15.03 - Landlord's Payment of Utilities. If the non-payment of utility charges payable by Tenant could give rise to a lien against the Premises and/or the Center or could result in Landlord being liable for payment of any such charges, then Landlord may pay such charges directly to the utility companies for Tenant's account and all such payments, plus interest at the rate of eighteen percent (18%) per annum or such higher rate as may be allowed by law, shall constitute sums due from Tenant to Landlord, payable forthwith on request as additional rent.

ARTICLE XVI ASSIGNMENT

Section 16.01 - Assignment or Sublease. Tenant shall not assign, mortgage or encumber this Lease, in whole or in part, or sublet all or any part of the Premises. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

**ARTICLE XVII
DEFAULT AND REMEDIES**

Section 17.01 - Events of Default. The following events shall be deemed to be events of default by Tenant under this Lease if:

A. Tenant shall fail to pay when due any sum of money to be paid to Landlord hereunder, whether an installment of rent, any additional rent, or any other payment or reimbursement to Landlord required herein and such failure shall continue for a period of five (5) days from the date such payment was due regardless of the number of times of Landlord's prior acceptance of late payments and/or late charges, if Landlord notifies Tenant once in any six (6) month period that Base Rent or any Additional has not been paid when due without regard to any grace period, any further late payment in the next ensuing six (6) month period will constitute a default beyond the applicable grace period.

B. Tenant shall fail to comply with any term, provision or covenant of this Lease, including compliance with then promulgated Rules and Regulations of Landlord, (other than by failing to pay any sum of money) and shall not cure such failure within ten (10) days immediately if the failure involves a hazardous or emergency condition,) after written notice thereof to Tenant; or

C. Tenant shall fail to continuously occupy and use the Premises or shall abandon or vacate any substantial portion of the Premises. It is understood and agreed that such vacancy and failure to occupy and use the subject Premises shall be a default whether or not Tenant continues to pay rent during such period of vacancy or non-use; or

D. Tenant shall fail to immediately vacate the Premises upon termination of this Lease, by lapse of time or otherwise or upon termination of Tenant's right to possession; or

E. The leasehold interest of Tenant shall be levied upon under execution or be attached by process of law or Tenant shall fail to contest diligently the validity of any lien or claimed lien and give sufficient security to Landlord to insure payment thereof or shall fail to satisfy any judgment rendered thereon and have the same released, and such default shall continue for ten (10) days after written notice thereof to Tenant; or

F. Tenant or any guarantor of Tenant's obligation hereunder shall become insolvent, admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency statute, make an assignment for the benefit of creditors, make a transfer in fraud of creditors, apply for or consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or other arrangement under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable law or statute of the United States or any state thereof; or

G. A court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a receiver of Tenant, or of the whole or any substantial part of its property, with or without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within thirty (30) days from the date of entry thereof.

Section 17.02 - Remedies.

A. Upon the occurrence of any of such events of default described in the Lease, Landlord shall have the

option to pursue any one or more of the following remedies without any notice or demand whatsoever.

- (i) Landlord may terminate, at its election, this Lease or terminate Tenant's right to possession only, without terminating the Lease;
- (ii) Upon any termination of this Lease, whether by lapse of time or otherwise, or upon any termination of Tenant's right to possession without termination of the Lease, Tenant shall surrender possession and vacate the Premises immediately, and deliver possession thereof to Landlord. Tenant hereby grants to Landlord full and free license to enter into and upon the Premises in such event with or without process of law and to repossess the Premises and to expel or remove Tenant and any others who may be occupying or within the Premises and to remove any and all property therefrom, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without incurring any liability for any damage resulting therefrom. Tenant hereby waives any right to claim damages for such re-entry and expulsion, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law;
- (iii) Upon termination of this Lease, whether by lapse of time or otherwise, Landlord shall be entitled to recover as damages, all rent, including Additional Rents, and other sums due and payable by Tenant on the date of termination, plus the sum of (a) an amount equal to the then present value of the rent, including any amounts treated as Additional Rents hereunder, and other sums provided herein to be paid by Tenant for the residue of the stated Term hereof, less the fair rental value of the Premises for such residue (taking into account the time and expense necessary to obtain a replacement tenant or tenants, including expenses hereinafter described in clause (iv) relating to recovery of the Premises, preparation for reletting and for reletting itself), and (b) the cost of performing any other covenants which would have otherwise required to have been performed by Tenant;
- (iv) Upon any termination of Tenant's right to possession only without termination of the Lease:
 - (a) Landlord may enter, at Landlord's option, the Premises, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof as provided in subsection (ii) above, without such entry and possession terminating the Lease or releasing Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay the rent, including any amounts treated as Additional Rents hereunder, for the full term. In any such case Tenant shall pay forthwith to Landlord if Landlord so elects, a sum equal to the entire amount of the rent, including any Additional Rents hereunder, for the performance of the stated Term hereof, plus any other sums provided herein to be paid by Tenant for the remainder of the Lease term.
 - (b) Landlord may, but need not, relet the Premises or any part thereof for such rent and upon such terms and conditions as Landlord, in its sole discretion, shall determine, including the right to relet the Premises as a part of a larger area, and the right to change the character or use of the Premises. If Landlord decides to relet the Premises or a duty to relet is imposed upon Landlord by law, Landlord and Tenant agree that Landlord shall only be required to use the same efforts Landlord then uses to lease other properties Landlord owns or manages; provided, however, that Landlord or its Agents shall not be required to give any preference or priority to the showing or leasing of the Premises over any other space that Landlord may be offering to lease and may place a suitable prospective tenant in any such available space regardless of when such alternative space becomes available; provided, further, that Landlord shall not be required to observe any instruction given by Tenant about such reletting or accept any substitute tenant offered by Tenant unless such offered substitute tenant has a creditworthiness acceptable to Landlord, leases the entire Premises, agrees to use the Premises in a manner consistent with the Lease and leases the Premises at the same rent, for no more than the current Term and on the same other terms and conditions as in this Lease without the expenditure by Landlord for tenant improvements or broker's commissions. In any such case, Landlord may, but shall not be required to, make repairs, alterations and additions in or to the Premises and redecorate the same to the extent Landlord deems necessary or desirable, and Tenant shall pay, upon demand, the cost thereof, together with Landlord's

expenses of reletting, including, without limitation, any broker's commission incurred by Landlord. If the consideration collected by Landlord upon any such reletting plus any sums previously collected from Tenant are not sufficient to pay the full amount of all rent, including any amounts treated as additional rent hereunder and other sums reserved in this Lease for the remaining term hereof, together with the costs of repairs, alterations, additions, redecorating, and Landlord's expenses of reletting and the collection of the rent accruing therefrom (including Attorneys' fees and in-house broker's commissions), Tenant shall pay to Landlord the amount of such deficiency upon demand and Tenant agrees that Landlord may file suit to recover any sums falling due under this subsection from time to time;

(v) Landlord may enter into and upon the Premises, at Landlord's option, with or without process of law, if Landlord reasonably determines that Tenant is not acting within a commercially reasonable time to maintain, repair or replace anything for which Tenant is responsible hereunder and correct the same, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage resulting therefrom. Tenant agrees to reimburse Landlord, on demand, as additional rent, for any expenses which Landlord may incur as a result of effecting compliance with Tenant's obligations under this Lease;

(vi) Any and all property which may be removed from the Premises by Landlord pursuant to the authority of the Lease or of law to which Tenant is or may be entitled, may be handled, removed and stored, as the case may be, by or at the direction of Landlord at the sole risk, cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. Any such property of Tenant not removed by Tenant from storage within thirty (30) days after the removal from the Premises shall conclusively be presumed to have been conveyed by Tenant to Landlord under this Lease as a bill of sale without further payment or credit by Landlord to Tenant.

B. Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies provided herein by law (all such remedies being cumulative), nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due or other remedies available to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. No act or thing done by Landlord or its agents during the Term hereby granted shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or accept a surrender of said Premises shall be valid unless in writing and signed by Landlord. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Landlord's acceptance of the payment of rental or other payments due hereunder after the occurrence of an event of default shall not be construed as a waiver of such default, unless Landlord so notifies Tenant in writing. Forbearance by Landlord to pursue or enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of Landlord's right to pursue or enforce any such remedies with respect to such default or any subsequent default. If, on account of any breach or default by Tenant in Tenant's obligations under the terms and conditions of this Lease, it shall become necessary or appropriate for Landlord to employ or consult with an attorney concerning, or to enforce or defend any of Landlord's rights or remedies hereunder, Tenant agrees to pay all costs and expenses in connection therewith including reasonable Attorney's fees so incurred, including those incurred in any post-trial or appellate proceedings.

C. Without limiting the foregoing, in the event Tenant is a corporation Tenant shall notify Landlord in writing of the identity of Tenant's Registered Agent, and Tenant agrees that such service of process upon such party shall constitute personal service of process upon Tenant (provided, however, Landlord does not hereby waive the right to serve the Tenant with process by any other lawful means). In the event the identity of said

Agent changes at any time during this Lease Term, then Tenant shall notify Landlord of the new Agent's identity within three (3) days of such change. Tenant expressly waives any right to trial by jury.

Section 17.03 - Default by Landlord. Landlord shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within sixty (60) days (or such additional time as is reasonably required to correct any such defaults) after written notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation.

ARTICLE XVIII SIGNS, ADVERTISING AND LIGHTING

Section 18.01 - Signs. TENANT SHALL NOT ERECT OR MAINTAIN ANY SIGN ON THE EXTERIOR OF THE PREMISES WITHOUT LANDLORD'S PRIOR WRITTEN CONSENT. If Landlord's prior written consent to an exterior sign has been obtained by Tenant, Tenant agrees that such sign shall be in accordance with (a) Landlord's sign requirements, including, without limitation, that such sign may advertise only Tenant's trade name or type of business and must comply with Landlord's then requirements in design, architecture, size and colors (which shall include the color background of exterior walls, fascia and sign parapets on which signs are placed and which Landlord shall have the right to change from time to time) and (b) any applicable statutes, ordinances, codes, rules and/or regulations of governmental and quasi governmental authorities, including any governmental, quasi governmental or property owner's association and Tenant shall maintain any and all such signs, exterior wall, fascia, and sign parapet areas in good condition and repair at all times. Upon vacating the Premises, Tenant agrees, at its sole cost and expense, to remove its signs and repair any damage caused by the installation, maintenance or removal thereof. Landlord shall have the right to remove any signs in violation of these provisions at tenant's expense plus interest at the rate of eighteen percent (18%) per annum or such higher rate as may be allowed by law, without notice to Tenant and without any liability therefor.

In no event shall Tenant display a sign advertising any business other than that conducted by Tenant. Further, Tenant shall not display any signs indicating a new business location to which Tenant is moving or intends to move. Landlord shall have the right to immediately remove any signs displayed in violation of these provisions.

Section 18.02 - Advertising. Without Landlord's prior consent and approval, Tenant shall not (a) install any exterior lighting or plumbing fixtures under canopy signs, shades or awnings, or any exterior decorations or painting, or build any fences or make any changes to the storefront; (b) erect or install any exterior or interior window or door signs or advertising media, window or door lettering or placards; (c) keep or display any merchandise on or otherwise obstruct the sidewalks or other areas adjacent to the Premises; or (d) fail to maintain the display windows and signs in a neat and clean condition. Tenant shall not use any advertising or other media reasonably objectionable to Landlord or other tenants and/or in violation of any local codes governing same, such as loudspeaker, phonographs or radio broadcasts that can be heard outside the Premises.

Section 18.03 - Lighting. Tenant shall keep the display sign and window in the Premises lighted from dusk until the Center closes (whichever occurs later) or at such other times as may be designated by Landlord.

ARTICLE XIX EMINENT DOMAIN

Section 19.01 - Parties' Rights in Condemnation of Public Taking.

A. If the Premises, or any part thereof, shall be permanently taken or condemned or transferred by agreement in lieu of condemnation, for any public or quasi-public use or purpose by any competent authority,

and whether or not this Lease shall be terminated, the entire compensation award therefor, both leasehold and reversion, shall belong to Landlord without any deduction therefrom for any present or future estate of Tenant and Tenant hereby assigns to Landlord all its rights, title and interest in and to any such award. Tenant shall, however, be entitled to claim, prove and receive from the condemning authority (and not from Landlord) in the condemnation proceedings such separate award as may be allowed for the unamortized cost of fixtures and other equipment installed by it but only if such award shall be in addition to Landlord's award for land, buildings and other improvements (or portions thereof) and other compensable items in connection with the taking, as if this sentence were not included herein.

B. If the entire Premises shall be taken, condemned or transferred as aforesaid, then this Lease shall terminate and shall become null and void from the time possession thereof is acquired by the condemning authority and from that date the parties hereto shall be released from any future obligations hereunder. However, in the event that only a portion of the Premises shall be so taken, condemned or transferred, then Landlord may elect to terminate this Lease or repair and restore the portion not affected by the taking, and thereafter fixed minimum rent and other charges to be paid by Tenant shall be equitably and proportionately adjusted.

C. If in Landlord's judgment a material portion of the Center shall be taken, condemned or transferred as aforesaid (regardless of whether the Premises are affected), Landlord may terminate this Lease by giving Tenant written notice of its election to do so. In such event this Lease and the Term shall terminate ninety (90) days after the date of said notice and thereupon each party will be relieved of all obligations and liabilities accruing under this Lease subsequent to the effective termination date, and the provisions with respect to the awards shall be as set forth above in Paragraph "A" of this Article XIX. Until the effective termination date all terms and conditions of this Lease will be and remain in full force and effect.

D. Notwithstanding anything in this Lease to the contrary, (a) if all or any portion of the Center shall be taken, condemned or transferred and the award to Landlord is insufficient to pay Landlord for the costs of repairing or restoring the Center or any part thereof (including the Premises), or (b) if any mortgagee of the Center, or anyone else entitled to all or any part of Landlord's award does not consent to the payment thereof to Landlord for such purpose; then, and in any such event, Landlord, at its election, may terminate this Lease on thirty (30) days' prior written notice to Tenant. In such event this Lease and the Term shall terminate thirty (30) days after the date of said notice and thereupon each party will be relieved of all obligations and liabilities accruing under this Lease subsequent to the effective termination date. Until the effective termination date all terms and conditions of this Lease will be and remain in full force and effect.

ARTICLE XX QUIET ENJOYMENT

Section 20.01 - Tenant's Right to Quiet Enjoyment. Landlord agrees that if Tenant timely pays the rents and other charges herein provided and performs all of the obligations herein stipulated to be performed on Tenant's part, Tenant shall have quiet enjoyment and possession of the Premises, subject to all terms and conditions of this Lease.

Section 20.02 - Landlord's Changes. Anything herein to the contrary notwithstanding, Landlord expressly reserves the right at any time or times to change the name and/or address of the Center and make changes, additions, deletions, removals, replacements, alterations and improvements in and to the Center and/or its facilities, including construction at any time(s) of upper level space above any buildings now or hereafter existing in the Center and any work done to comply with governmental or quasi-governmental requirements. In no event shall Landlord be subject to any liability therefor nor shall any such actions constitute a default of Landlord's covenant of quiet enjoyment or entitle Tenant to any compensation, rent reduction, Lease amendment or termination or any other redress or remedy.

**ARTICLE XXI
SECURITY DEPOSIT**

Paragraph deleted.

**ARTICLE XXII
MISCELLANEOUS**

Section 22.01 - Notices. All notices and rental checks shall be sent to Landlord in care of Jess R. Santamaria, at 675 Royal Palm Beach Boulevard, Royal Palm Beach, Florida 33411 or until Tenant is notified otherwise in writing. All notices given to the Tenant shall be sent to Tenant at the leased premises or at 14000 Greenbriar Blvd., Wellington, FL 33414 or until Landlord is notified otherwise in writing. Except for monthly rent or additional rent notices, all notices to each party shall be by hand delivery or certified mail, return receipt requested.

Section 22.02 - Waiver. One or more waivers of any breach of a covenant, term, condition of this Lease by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval of either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 22.03 - Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant other than Landlord and Tenant. It being expressly understood and agreed that neither the method of computation of rent nor any of the other provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the customary relationship of a landlord and tenant.

Section 22.04 - Negation of Personal Liability. Notwithstanding anything contained herein to the contrary, Tenant acknowledges and agrees that neither Landlord nor its individual principals or agents shall have any personal liability with respect to any of the provisions of this lease and Tenant shall look solely to the fee estate and personal property of Landlord in the land and buildings comprising the Mall of which the Premises forms a part for the satisfaction of Tenant's remedies, including without limitation, the collection of any judgment or the enforcement of any other judicial process requiring the payment or expenditure of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be observed and/or performed by Landlord, subject, however, to the prior rights of any holder of any mortgage covering all or part of the Mall. No other assets of Landlord whether real or personal in nature or any individual principal or agent of Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claim. In the event Tenant obtains a judgment against Landlord, the judgment docket shall be so noted as to reflect the Landlord as the sole judgment debtor. This Section shall inure to the benefit of Landlord's successors and assigns and their respective individual principals, and agents.

Section 22.05 - Governing Laws. The laws of the State of Florida shall govern the validity, performance and enforcement of this Lease. The parties agree that in the event of litigation venue shall lie in Palm Beach County.

Section 22.06 - Savings Clause. The invalidity or unenforceability of any provision of this Lease shall not affect or impair the validity or enforceability of any other provision.

Section 22.07 - Paragraph Headings. The paragraph titles herein are for convenience only and do not define, limit or construe the contents of such paragraphs.

Section 22.08 - Covenant to Bind Successors. It is agreed that the provisions, covenants and conditions of this Lease shall be binding upon the legal representatives, heirs, successors and assigns of the respective parties hereto.

Section 22.09 - Estoppel Certificate. Within five (5) days after request therefor by Landlord, Tenant shall provide in recordable form a certificate to any prospective mortgagee or purchaser, or to Landlord, certifying (if such be the case) that this Lease is in full force and effect and there are no defenses or offsets thereto, or stating those claimed by Tenant, and any other accurate statement reasonably required by Landlord or the prospective mortgagee or purchaser. The failure by Tenant to furnish such certificate within the time period stated above shall be deemed to mean that this Lease is in full force and effect and there are no defenses or offsets by Tenant. Additionally, Tenant hereby irrevocably appoints Landlord as attorney-in-fact for Tenant with full power and authority to execute and deliver in the name of Tenant any such documents, such power being coupled with an interest.

Section 22.10 - Notice to Mortgagee. If the leased Premises or any part thereof are at any time subject to a first mortgage, and this Lease or the rentals are assigned to such mortgagee and the Tenant is given written notice thereof, including the post office address of such assignee, then the Tenant shall not terminate this Lease for any default on the part of the Landlord without first giving written notice to such assignee, specifying the default in reasonable detail and affording such assignee a reasonable opportunity to make performance for and on behalf of Landlord.

Section 22.11 - Mortgage Subordination. Tenant accepts this Lease subject and subordinate to any mortgage and/or deed of trust now or at any time hereafter constituting a lien or charge upon the Premises and/or the Mall without the necessity of any act or execution of any additional instrument of subordination; provided, however, that if the mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have Tenant's interest in this Lease superior to any instrument, then by notice to Tenant from such mortgagee, trustee or holder, this Lease shall be deemed superior to such lien, regardless of when this Lease was executed. Tenant shall at any time hereafter on demand execute any instruments, releases or other documents which may be required by any mortgagee for the purpose of evidencing the subordination of this Lease to the lien of any such mortgage or for the purpose of evidencing the superiority of this Lease to the lien of any such mortgage, as the case may be. Additionally, Tenant hereby irrevocably appoints Landlord as Attorney-in-fact for Tenant with full power and authority to execute and deliver in the name of Tenant any such documents, such power being coupled with an interest.

Section 22.12 - No Accord and Satisfaction. No acceptance by Landlord of a lesser sum than the full amounts of rents or other charges then due shall be deemed to be other than on account of the earliest of such rents or charges then due, nor shall any endorsement or statement on any check or letter accompanying any check or payment for rent or other charge be deemed an accord and satisfaction, and Landlord may accept such check or payment containing such endorsement or statement without prejudice to its right to recover the balance of monies due from Tenant or to pursue any other remedy provided by law or in this Lease.

Section 22.13 - Force Majeure. Landlord shall be excused for any period of delay in the performance of any obligation hereunder when such delay is caused by any circumstance beyond Landlord's reasonable control, including labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental or quasi-governmental regulations, controls or shutdowns, administrative hearings or judicial litigation including any adverse findings, orders, verdicts or judgments therein, fire or other casualty, inability to obtain any materials, services or financing, weather or other acts of

God.

Section 22.14 - Recording. Tenant shall not (by itself or through a third party) record this Lease or any reference hereto in the Public Records of Palm Beach County where the Premises; however upon Landlord's request from time to time and, within ten (10) days after such request, Tenant shall execute, acknowledge and deliver to Landlord a "short form" or memorandum of this Lease for recording purposes.

Section 22.15 - Brokers. Tenant represents and warrants to Landlord that no real estate broker, agent or finder was involved on its behalf in negotiating or consummating this Lease. Tenant acknowledges and agrees to indemnify Landlord and its agents against any and all liabilities, costs and expenses (including attorneys' fees and, in the event of litigation, such fees plus court costs through appeal) arising from any claims of any real estate broker, agent or finder claiming to have dealt with or represented Tenant, or anyone acting for or on behalf of Tenant, in connection with any matters related to this Lease.

Section 22.16 - Invalidity of Provisions. If any provision of this Lease shall be held to be invalid or unenforceable to the maximum extent possible the remaining provisions of this Lease shall in no way be affected or impaired, and such remaining provisions shall continue in full force and effect.

Section 22.17 - Gender. As used in this Lease, the word "person" shall mean and include, where appropriate, an individual or a corporation, partnership or other entity; the plural shall be substituted for the singular and the singular for the plural, where appropriate; the words of any gender shall mean and include any other gender.

Section 22.18 - Counterparts. This Lease can be executed in any number of counterparts, each of which, when fully executed, shall be deemed to be an original, and it shall not be necessary to produce or account for more than one such counterpart to prove the full execution of this Lease.

Section 22.19 - Consents. Whenever Landlord's consent or approval is expressly or impliedly required by any provision of this Lease, the consent or approval may be granted or withheld arbitrarily in Landlord's sole discretion unless otherwise specifically stated in such provision. An action for declaratory judgment or specific performance will be Tenant's sole right and remedy in any dispute regarding any obligation of Landlord under this Lease not to unreasonably withhold its consent or approval. If Tenant requests Landlord's consent or approval to any matter or thing expressly or impliedly requiring Landlord's consent or approval under this Lease, then Landlord, as a condition precedent to granting its consent or approval may require (in addition to any other requirements of Landlord in connection with such request) that Tenant pay as additional rent a processing fee of \$250.00 in connection with the consideration of such request and/or the preparation of any documents pertaining thereto.

Section 22.20 - Licenses, Permits and Authorizations. Tenant, at its sole cost and expense, shall procure, maintain and comply with all necessary licenses, permits and authorizations for conducting in a lawful manner Tenant's business at the Premises. Such licenses, permits and authorizations shall at all times be available for inspection by Landlord.

Section 22.21 - Payments.

A. With the exception of fixed minimum rent, all sums whatsoever payable by Tenant under this Lease will be deemed to be, and be collectible without set-off or deduction as additional rent whether or not so stated in any particular provision(s) hereof. No delay or failure of Landlord in rendering any bill or statement to Tenant will prejudice Landlord's right to thereafter render the same or others, nor constitute a waiver of or impair Tenant's obligation to make all of the payments required by this Lease. Any bill or statement to Tenant will be conclusive and binding unless within thirty (30) days after the date thereof Landlord receives Tenant's written explanation of Tenant's objection thereto.

B. Payment from Tenant by check will always be subject to timely collection of the funds represented thereby, and if any check tendered by or on behalf of Tenant in payment of any sum due under this Lease is dishonored for any reason, Tenant will pay to Landlord the sum of \$50.00 for each such check, to defray the expense of handling, processing and bookkeeping. If Landlord elects to redeposit Tenant's check and it is again dishonored for any reason, then in each such instance an additional \$50.00 will be paid by Tenant to Landlord. Any such check which Landlord elects not to re-deposit will be immediately replaced by Tenant with a cashier's check which is the direct obligation of a local bank or savings and loan institution. The amount of such replacement check shall be in the aggregate amount of the payment tendered, plus the Late Charge thereon, if any, plus the \$50.00 charge(s) required by this paragraph. All sums that may become due and owing to Landlord pursuant to this paragraph will constitute additional rent, payable within five (5) days after rendition to Tenant of a bill or statement therefor.

Section 22.22 - Survival of Obligations. All outstanding obligations and liabilities of Tenant under this Lease shall survive the expiration or sooner termination of the Term.

Section 22.23 - Florida Sales Tax. All rent, Additional Rents and other sums due to be paid by Tenant to Landlord hereunder shall be accompanied by the payment of sales and other tax thereon to the extent required by applicable Florida law, currently in the amount of six and one-half percent (6.5%). Tenant may provide to Landlord a valid and verifiable Certificate of Exemption, which will be considered compliance with this provision.

Section 22.24 – Trash Removal. Tenant shall keep all garbage, trash, rubbish or other refuse in rat-proof containers solely within the interior of the Premises and shall deposit such garbage, trash, rubbish or other refuse, on a daily basis, in a dumpster to be provided and maintained by Landlord, in the parking area of the Mall or otherwise outside of the Premises (Tenant understands that any dumpster(s) provided by Landlord may be used by one or more other Tenants of the Mall), provided that the volume of same is consistent with the use of the Premises as a restaurant and bar and does not exceed the volume generated by the previous Tenant. In the event that larger or additional dumpsters or increased collections are required by virtue of an increase in the levels of garbage and waste produced by Tenant, Landlord may require Tenant to pay any additional charges related to the increased need for dumpsters and/or disposal. Tenant shall be responsible for the handling or pick up for garbage, rubbish, waste or debris related to remodeling or improvement made by Tenant at Tenant's expense.

Section 22.25 - Limitation on Certain Rights. Although Landlord has granted or may grant various rights to Tenant (e.g., respecting alterations, signs, etc.), Landlord will not be liable to Tenant nor will this Lease or any of Tenant's obligations hereunder be adversely affected if at any time Tenant cannot exercise such rights in whole or in part by reason of prohibitions, requirements, terms or conditions imposed by any governmental or quasi governmental authority, including, without limitation, the Wellington Environmental Control Committee ("WECC") or any private property owners' association.

Section 22.26 - Cleaning. Tenant agrees to furnish and pay for cleaning services for the Premises and painting (subject to the Landlord's approval) as may be required.

Section 22.27 - Fire and Sprinkler Protection. If at any time Landlord reasonably determines the need for any fire extinguishers) and/or other similar or dissimilar equipment or device(s) for the prevention of fire hazards, in or with respect to the Premises, then Tenant, at its sole cost and expense, will immediately furnish and install the same and will thereafter at its sole cost and expense maintain and repair (and, if necessary in Landlord's judgment, replace) the same to Landlord's satisfaction. Maintenance, repair and, if necessary in Landlord's judgment, replacement of the existing sprinkler system (if any) servicing the Premises will also be done by Tenant, at its sole cost and expense. If at any time Landlord determines the need for modification of such system or any part thereof as a result of business operations at the Premises, Tenant will promptly effect such

modification at its sole cost and expense.

Section 22.28 - Radon Gas. Pursuant to Florida law (enacted effective as of January 1, 1989), Landlord hereby makes the following disclosure to Tenant: "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit'.

Section 22.29 - Special Covenant. It being recognized that the Mall has been developed and is maintained by Landlord as a location for a first rate type of business occupancy, Tenant agrees, as a special inducement to Landlord to enter into this Lease, that if Landlord determines that the Premises are regularly attracting persons whose presence in the Mall is deemed by Landlord to be undesirable, then notwithstanding any contrary provision hereof, such fact will constitute a default under this Lease beyond the applicable grace period and without the requirement of notice from Landlord entitling Landlord to the same rights and remedies as if such default were with respect to the non-payment of the fixed minimum rent reserved herein including, but not limited to, the termination of this Lease.

Section 22.30 - Attornment. In the event of (a) transfer of Landlord's interest in the Premises; or (b) the termination of any ground or underlying lease or (c) the purchase of the Premises or Landlord's interest therein in a foreclosure sale or by deed in lieu of foreclosure under any mortgage or pursuant to a power of sale contained in any mortgage, then in any of such events Tenant shall, at Landlord's request, attorn to and recognize the transferee or purchaser of Landlord's interest or the landlord under the terminated ground or underlying lease, as the case may be, as Landlord under this Lease for the balance of the then remaining Term, and thereafter this Lease shall continue as direct lease between such person, as "Landlord", and Tenant, as "Tenant", and if the landlord under the terminated ground or underlying lease shall be an institutional lender, or if the transferee or purchaser acquired Landlord's interest pursuant to a foreclosure sale, deed in lieu of foreclosure or power of sale under a mortgage held by an institutional lender, such landlord, transferee or purchaser shall not be liable for any act or omission of Landlord prior to such lease termination or prior to such person's succession in title, nor be subject to any offset, defense or counterclaim accruing prior to such lease termination or prior to such person's succession in title, nor be bound by any payment of Rent or Additional Rents prior to such lease termination or prior to such person's succession in title for more than one (1) month in advance or by any modification of this Lease or any waiver, compromise, release or discharge of any obligation of Tenant hereunder unless such modification, waiver, compromise, release or discharge shall have been specifically consented to in writing by the landlord any such ground or underlying lease or the mortgagee under any such mortgage, and such person and each person succeeding to such person's interest in the Premises shall not be liable for any warranty or guaranty of Landlord under this Lease. If Landlord's interest in the building terminates by reason of sale or other transfer, Landlord will immediately thereupon be released from all further liability to Tenant under this Lease.

Section 22.31 - Jury Trial. Landlord and Tenant hereby mutually, voluntarily, and intentionally waive the right either may have to a trial by jury in respect to any and all civil action commenced by either party in connection with this Lease. If there are any facts or allegations that need to be tried in court of law, every position of said trial will be before a court without a jury.

Section 22.32 - Entire Agreement. This Lease, and any amendments attached hereto, constitutes the complete understanding of the parties. **ORAL OR WRITTEN REPRESENTATIONS NOT EMBODIED HEREIN ARE OF NO FORCE OR EFFECT.**

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, Landlord and Tenant, intending to be legally bound, have executed this Lease, as of the day and year first above written. If Tenant is an entity, the individual(s) signing this lease on behalf of Tenant hereby personally represent(s) and warrant(s) to Landlord that such individual(s) has/have been duly authorized and employed to do so by all necessary action of Tenant's Village Council and/or other requisite parties as the case may be.

Witnesses:

LANDLORD:
WELLINGTON MALL, LTD.

Print name:_____

By: Jess R. Santamaria, President
Jess R. Santamaria, Inc., corporate general partner

Print name:_____

TENANT:
VILLAGE OF WELLINGTON

Print name:_____

By: Darell Bowen
Its: Mayor

Print name:_____

STATE OF FLORIDA
COUNTY OF PALM BEACH

I hereby certify that on the _____ day of February, 2009, before me, a Notary Public in and for the above state and county, personally appeared Darell Bowen, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

NOTARY PUBLIC

My Commission Expires:

5. D

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: RESOLUTION R2009-20 (AWARD OF BEAUTIFUL WELLINGTON GRANTS TIER II - PROJECTS TOTAL COST \$57,240)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA APPROVING BEAUTIFUL WELLINGTON GRANTS - TIER II FOR GRAND ISLES AND THE ISLES AT WELLINGTON; AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO GRANT AGREEMENTS TO EFFECTUATE THE GRANTS; AND PROVIDING AN EFFECTIVE DATE.

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: Village Council acceptance of Resolution R2009-20 Award of Beautiful Wellington Grants Tier II.

EXPLANATION: Grand Isles and The Isles at Wellington Beautiful Wellington Grant applications were received during the 2008-2009 BWG Cycle. Both applications were presented to the Tree Board on February 4, 2009. The Tree Board recommended approval of Grand Isles and The Isles at Wellington projects.

FISCAL IMPACT: In the Governmental Funds CIP, \$250,000.00 is budgeted for Beautiful Wellington Grant Projects Tier, I, II and III for Fiscal Year 2008-2009. Previous grant applications processed for Fiscal Year 2008-2009 equaled \$10,532.15 (Sturbridge Village – total project \$10,957.30 and Olympia – total project \$10,107.00).

Grand Isles and The Isles at Wellington grant requests for Tier II equal \$28,620 (Grand Isles – total project \$31,720 and The Isles at Wellington – total project \$25,520).

RECOMMENDATION: Staff recommends approval of the Tree Board's recommendation to approve the Grand Isles and The Isles at Wellington's Beautiful Wellington Grant projects.

RESOLUTION NO. R2009-20

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA APPROVING BEAUTIFUL WELLINGTON TIER II GRANTS FOR GRAND ISLES AND THE ISLES AT WELLINGTON AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO GRANT AGREEMENTS TO EFFECTUATE THE GRANTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Wellington offers the Beautiful Wellington Grant Program; and

WHEREAS, applications were received for various beautification projects within the Village; and

WHEREAS, through this program, the Village of Wellington participates in a matching grant program for the installation of beautification improvements; and

WHEREAS, the Tree Board recommends approval of grants for the following projects, as more particularly described in their respective applications with the estimated total project costs of the following amounts:

Grand Isles	\$31,720.00
The Isles at Wellington	\$25,520.00

WHEREAS, the Village Council has determined that it is in the best interest of the Village of Wellington to enter into Beautiful Wellington Grant Agreements with the above referenced projects.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified.

SECTION 2. The Village Council hereby approves the following Beautiful Wellington Grants and authorizes the Village Manager and Staff enters into the attached Grant Agreements for grant awards of fifty percent (50%) of the approved costs up to a maximum Village contribution of \$40,000.00 for Tier II Grants.

SECTION 3. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this _____ day of February, 2009.

ATTEST:

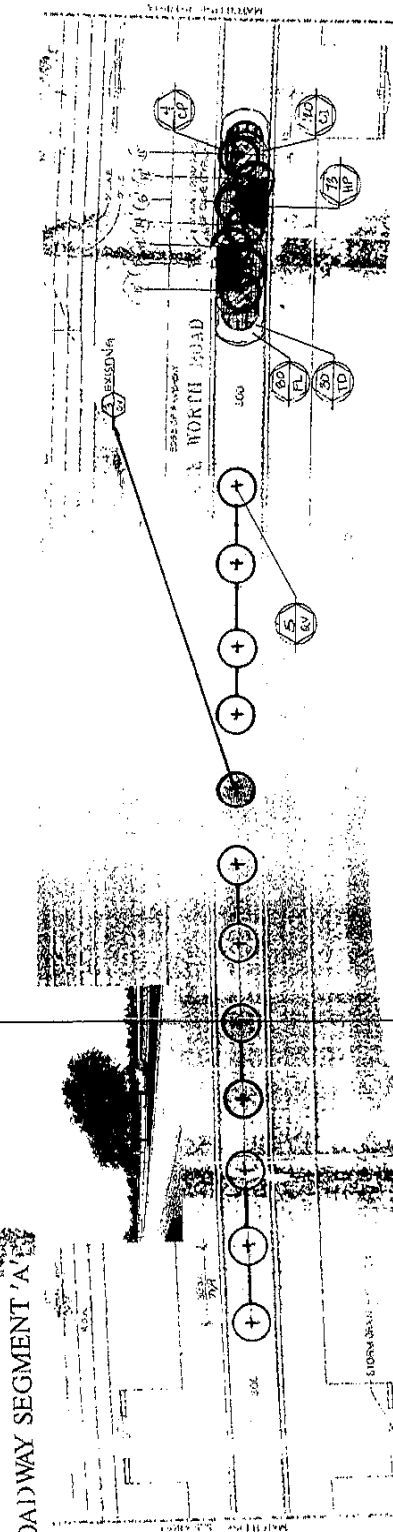
VILLAGE OF WELLINGTON, FLORIDA

BY: _____
Awilda Rodriguez, Village Clerk

BY: _____
Darell Bowen, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: _____
Jeffrey S. Kurtz, Village Attorney



TYPICAL ROADWAY SEGMENT 'B'

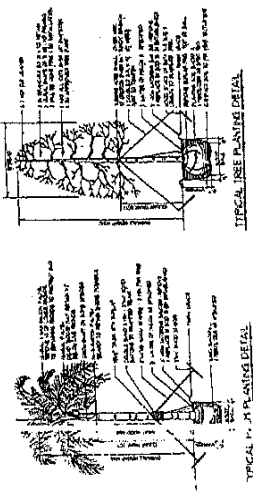
GRAND ISLES

[illegible]

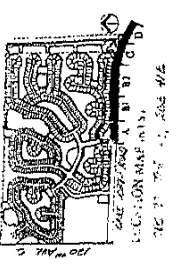
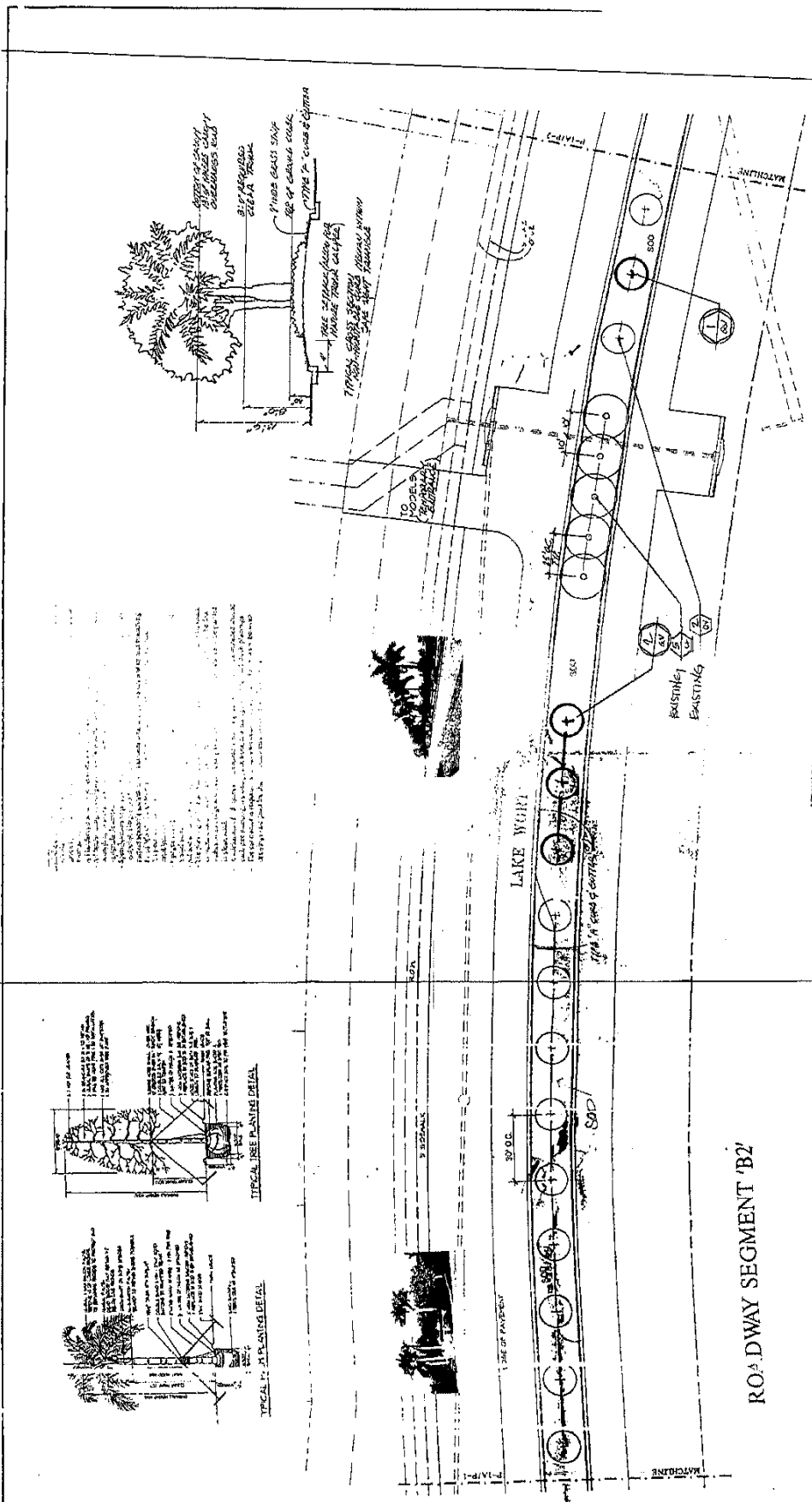
LAKE WORTH RD. MEDIAN

VALLEYCREST-

1882

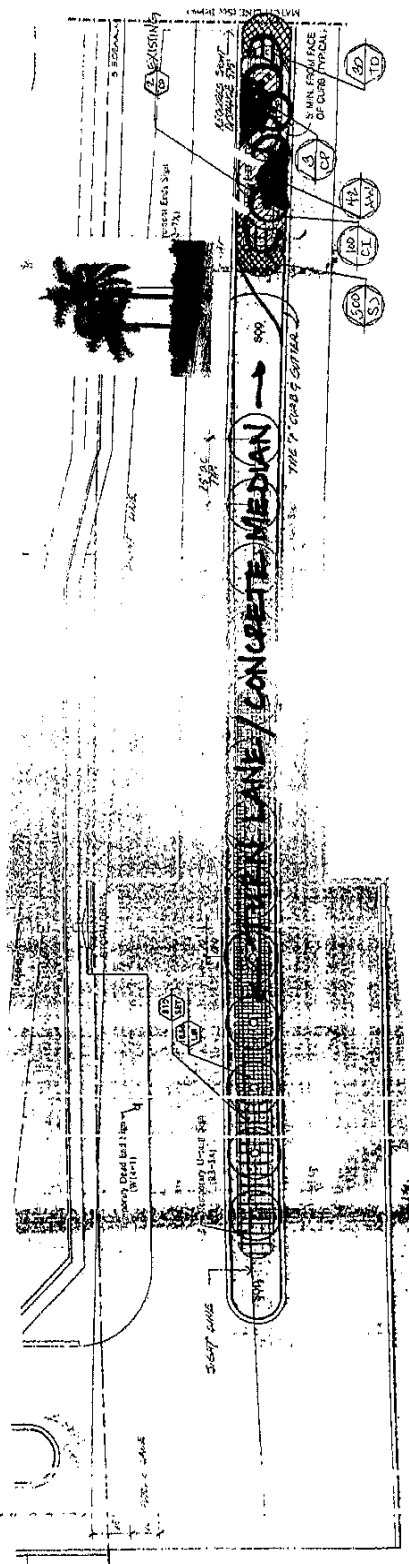


1. 10' x 10' PIT
2. 18\"/>

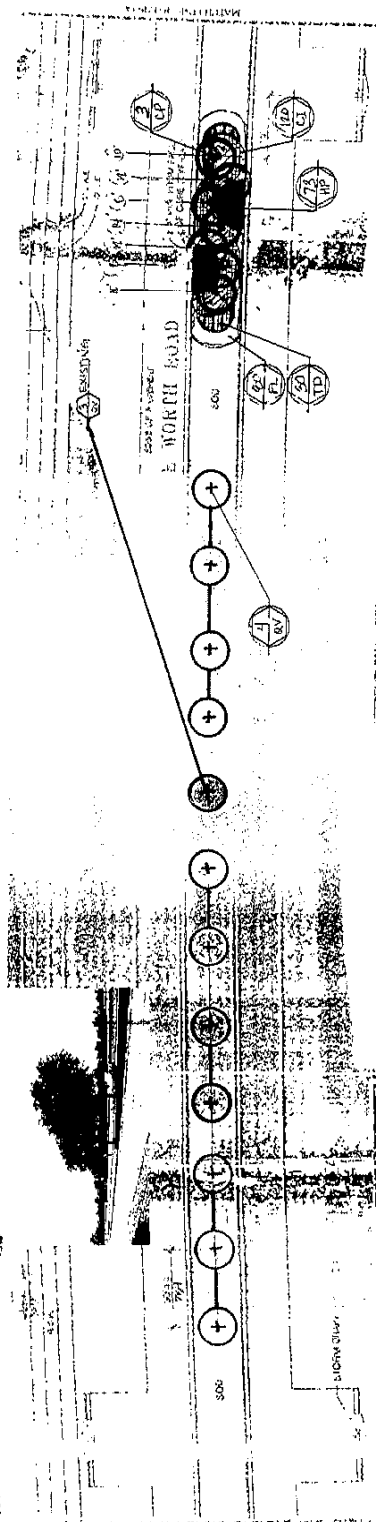


All landscaping and above ground structures shown herein are proposed and are subject to change without notice. The Engineer's Office is not responsible for the accuracy of the information provided by the client.

GRAND ISLES	
DATE: 10/1/11	PROJECT: 11-000000
LAKE WORTH ROAD PROJECT	
PROJECT NUMBER: 11-000000	



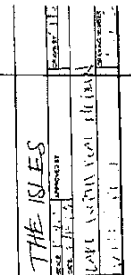
ROADWAY SEGMENT 'A'



TYPICAL ROADWAY SEGMENT 'B'



THE ISLES @ NEWINGTON	
DATE: 1/1/20	PROJECT: 100000000
BY: J. B. B.	DATE: 1/1/20
LAKE-NORTH RD. MEDIAN	
VAU EX-12-1	



5. E

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: RESOLUTION 2009-21 (RIGHT OF WAY CONSENT AGREEMENT BETWEEN FLORIDA POWER AND LIGHT AND THE VILLAGE OF WELLINGTON FOR BIG BLUE TRACE LANDSCAPING)

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: Staff requests approval of a Right-of-Way Consent Agreement between Florida Power and Light and the Village of Wellington.

EXPLANATION: The Big Blue Trace FPL Corridor Landscape project #200613 includes the addition of landscaping and improvements along the right of way at the entrance to the intersecting Florida Light and Power easements. This project is budgeted within the FY08/09 CIP.

Florida Light and Power (FPL) will execute a Right-of-Way Consent Agreement with the Village allowing for the use of the FPL easements during installation of the landscape buffer. This agreement (attached) has been reviewed and approved by the Village attorney.

FISCAL IMPACT: Capital Project #200613 – FY 2008/2009.

RECOMMENDATION: Staff recommends approval of the Florida Light & Power Right-of-Way Consent Agreement.

RESOLUTION NO. R2009-21

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, ACCEPTING A RIGHT-OF-WAY CONSENT AGREEMENT FROM FLORIDA POWER & LIGHT COMPANY ALLOWING THE VILLAGE TO CREATE LANDSCAPE BUFFERS IN THE FPL RIGHT-OF-WAY ADJACENT TO BIG BLUE TRACE BETWEEN SOUTHERN BOULEVARD AND DOUBLETREE TRAIL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Wellington is desirous of improving the aesthetics of its roadways; and

WHEREAS, the Florida Power & Light Company (FPL) has power lines running through right-of-way granted to them in the northern portion of the Village (hereinafter referred to as FPL corridor); and

WHEREAS, there is a desire to specifically improve the FPL corridor adjacent to Big Blue Trace; and

WHEREAS, the Village needs the consent of FPL to place landscaping within the FPL corridor; and

WHEREAS, a Right-of-Way Consent Agreement has been drafted for the purpose of allowing landscaping improvements within the FPL corridor adjacent to Big Blue Trace and is attached hereto as Exhibit "A"; and

WHEREAS, the Village staff recommends approval of the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified as being true and correct.

SECTION 2. The Village Council hereby accepts the proposed Right of Way Consent Agreement (attached as Exhibit "A") and the Mayor and Village Clerk are authorized to execute said Agreement on behalf of the Village of Wellington.

SECTION 3. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this _____ day of February, 2009.

ATTEST:

VILLAGE OF WELLINGTON

By: _____
Awilda Rodriguez, Village Clerk

By: _____
Darell Bowen, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

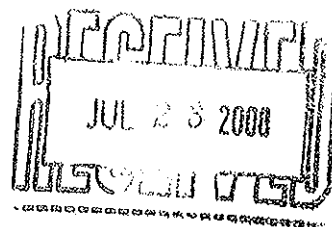
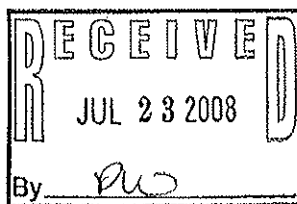
By: _____
Jeffrey S. Kurtz, Village Attorney



Florida Power & Light Company, P. O. Box 14000, Juno Beach, FL 33408-0420

July 18, 2008

Mr. Kirk J. Olney
Landscape Architect
IBI Group-Palm Beach
100 South Olive Avenue
West Palm Beach, Florida 33401



RE: Letter of No Objection for Village of Wellington
Section 4/Township 44S/Range 41E, Palm Beach County

Dear Mr. Olney :

We have received the Construction Drawings for the Big Blue Utilities Landscape Buffer prepared by IBI Group, Inc. and issued October 22, 2007. The plans show the use of the Florida Power & Light Company (FP&L) easements for the proposed project set in Section 4, Township 44 South, Range 41 East in Palm Beach County and located between Southern Boulevard and Doubletree Trail.

FP&L will permit the improvements that are specified on the plans for installation of a utilities landscape buffer. FP&L will execute a Right-of-Way Consent Agreement with the Village of Wellington to formalize this approval prior to construction. The rights and duties of the parties including, among others, insurance requirements, safety conditions and termination clauses are explained in the consent agreement. Please contact Michael Brown of FP&L Transmission Operations before commencement of any work at 561-840-3007 or 561-722-0043 for a safety meeting.

Let me know if you need any additional information. We look forward to the execution of the Right-of-Way Consent Agreement with the Village.

Sincerely,

FLORIDA POWER & LIGHT COMPANY

Joseph O'Hagan
Corporate Real Estate Representative

✓ Copy: David Lochmiller
Attachments

Line Name: Corbett-Ranch 230 kV, Osceola-Ranch 138 kV, Broward-Corbett 230 kV
Structure No.: A117V4-A117V7, 105V2-105V5, 117V4-117V7
Section, Township, Range: Section 4, Township 44S, Range 41E

RIGHT-OF-WAY CONSENT AGREEMENT

FLORIDA POWER & LIGHT COMPANY, a Florida corporation, whose mailing address is P.O. Box 14000, Juno Beach, Florida 33408-0420, Attn: Corporate Real Estate Department, hereinafter referred to as "Company", hereby consents to VILLAGE OF WELLINGTON, whose mailing address is 14000 Greenbriar Boulevard, Wellington, Florida 33414, hereinafter referred to as "Licensee", using an area within Company's right-of-way granted by that certain Right-of-Way Agreement recorded in Deed Book 1031, Page 476 and that certain Right-of-Way Agreement recorded in OR Book 1766, Page 1317 of the Public Records of Palm Beach County, Florida. The said area within Company's right-of-way, hereinafter referred to as "Lands", is more particularly described on Exhibit "A" attached hereto. The use of the Lands by Licensee shall be solely for the purpose of a utilities landscape buffer as shown on the plans and specifications submitted by Licensee, attached hereto as Exhibit "B".

In consideration for Company's consent and for the other mutual covenants set forth below, and for Ten Dollars and No Cents (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Licensee agrees to obtain all necessary rights from the owners of the Lands in the event Licensee does not own said Lands; to obtain any and all applicable federal, state, and local permits required in connection with Licensee's use of the Lands; and at all times, to comply with all requirements of all federal, state, and local laws, ordinances, rules and regulations applicable or pertaining to the use of the Lands by Licensee pursuant to this Agreement.

2. Licensee understands and agrees that the use of the Lands pursuant to this Agreement is subordinate to the rights and interest of Company in and to the Lands and agrees to notify its employees, agents, and contractors accordingly. Company specifically reserves the right to maintain its facilities located on the Lands; to make improvements; add additional facilities; maintain, construct or alter roads; maintain any facilities, devices, or improvements on the Lands which aid in or are necessary to Company's business or operations; and the right to enter upon the Lands at all times for such purposes. Licensee understands that in the exercise of such rights and interest, Company from time-to-time may require Licensee, to relocate, alter, or remove its facilities and equipment, including parking spaces and areas, and other improvements made by Licensee pursuant to this Agreement which interfere with or prevent Company, in its opinion, from properly and safely constructing, improving, and maintaining its facilities. Licensee agrees to relocate, alter, or remove said facilities, equipment, parking spaces and areas, and other improvements within thirty (30) days of receiving notice from Company to do so. Such relocation, alteration, or removal will be made at the sole cost and expense of Licensee and at no cost and expense to Company; provided however, should Licensee, for any reason, fail to make such relocation, alteration, or removal, Company retains the right to enter upon the Lands and make said relocation, alteration, or removal of Licensee's facilities, equipment, parking spaces and areas, and other improvements and Licensee hereby agrees to reimburse Company for all of its costs and expense incurred in connection therewith upon demand.

3. Licensee agrees that it will not use the Lands in any manner which, in the opinion of Company, may tend to interfere with Company's use of the Lands or may tend to cause a hazardous condition to exist. Licensee agrees that no hazardous substance, as the term is defined in Section 101 (14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC Section 9601 [14]), petroleum products, liquids or flammables shall be placed on, under, transported across or stored on the Lands, which restricts, impairs, interferes with, or hinders the use of the Lands by Company or the exercise by Company of any of its rights thereto. Licensee agrees further that in the event it should create a hazardous condition, then upon notification by Company, Licensee shall, within seventy-two (72) hours, at its sole cost and expense, correct such condition or situation; provided however that the Company retains the right to enter upon the Lands and correct any such condition or situation at any time and, by its execution hereof, Licensee hereby agrees to indemnify and hold harmless Company from all loss, damage or injury resulting from Licensee's failure to comply with the provisions of this Agreement.

4. Licensee hereby agrees and covenants to prohibit its agents, employees, and contractors from using any tools, equipment, or machinery on the Lands capable of extending greater than fourteen (14) feet above existing grade and further agrees that no dynamite or other explosives shall be used within the Lands and that no alteration of the existing terrain, including the use of the Lands by Licensee as provided herein, shall be made which will result in preventing Company access to its facilities located within said Lands. Unless otherwise provided herein, Licensee agrees to maintain a forty (40) foot wide setback, twenty (20) feet on each side, from Company's facilities.

5. Trees, shrubs, and other foliage planted or to be planted upon the Lands by Licensee are not to exceed, at maturity, a height of fourteen (14) feet above existing grade. Licensee hereby agrees to maintain the height of all vegetation on the Lands at a height not to exceed fourteen (14) feet above existing grade.

6. Outdoor lighting installed or to be installed upon the Lands by Licensee are not to exceed a height of fourteen (14) feet above existing grade and all poles or standards supporting light fixtures are to be of a non-metallic material.

7. Sprinkler systems installed or to be installed by Licensee upon the Lands are to be constructed of a non-metallic material and sprinkler heads are to be set so the spray height does not exceed fourteen (14) feet above existing grade and does not make contact with any Company's facilities. Aboveground systems shall not be installed

within or across Company patrol or finger roads and underground systems crossing said patrol and finger roads are to be buried at a minimum depth of one (1) foot below existing road grade.

8. Licensee agrees to warn its employees, agents, contractors and invitees of the fact that the electrical facilities and appurtenances installed or to be installed by Company within the Lands are of high voltage electricity and agrees to use all safety and precautionary measures when working under or near Company's facilities. See also Notification of FPL Facilities, made a part hereof and attached hereto as Exhibit "C".

9. Licensee agrees, at all times, to maintain and keep the Lands clean and free of debris. Except as provided herein, Licensee further understands and agrees that certain uses of the Lands are specifically prohibited; such uses include but are not limited to recreational purposes, hunting and camping, and Licensee agrees to notify its employees, agents, contractors, and invitees accordingly.

10. The use of the Lands by Licensee shall be at the sole risk and expense of Licensee, and Company is specifically relieved of any responsibility for damage or loss to Licensee or other persons resulting from Company's use of the Lands for its purposes.

11. Notwithstanding any provision contained herein, Licensee agrees to reimburse Company for all cost and expense for any damage to Company's facilities resulting from Licensee's use of the Lands and agrees that if, in the opinion of Company, it becomes necessary as a result of Licensee's use of the Lands for Company to relocate, rearrange or change any of its facilities, to promptly reimburse Company for all cost and expense involved with such relocation, rearrangement or change.

12. Licensee acknowledges the waiver of sovereign immunity for liability in tort contained in Florida Statutes 768.28 and acknowledges that such statute permits actions at law against the Licensee to recover damages in tort for money damages up to the amounts set forth in such statute for injury or loss of property, personal injury or death caused by the negligence or wrongful act or omission of an employee of Licensee while acting within the scope of the employee's office or employment under circumstances in which Licensee, if a private person, would be liable under the general laws of this state of such liability, loss, cost and expense.

13. Without waiving the right to sovereign immunity as provided by Florida Statutes, Section 768.28, the Licensee acknowledges that it is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of \$100,000 per person and \$200,000 per occurrence; or such monetary limits that may change and be set forth by the Florida Legislature. Licensee agrees to provide a statement or certificate of insurance evidencing such self-insurance.

14. This Agreement will become effective upon execution by Company and Licensee and will remain in full force and effect until completion of Licensee's use of the Lands pursuant to this Agreement, unless earlier terminated upon ninety (90) days written notice by Company to Licensee, or at the option of Company, immediately upon Licensee failing to comply with or to abide by any or all of the provisions contained herein.

15. The use granted herein as shown on Exhibit "B" shall be under construction by Licensee within one (1) year of the effective date of this Agreement and the construction shall be diligently pursued to completion. Licensee shall give Company ten (10) days prior written notice of its commencement of construction. "Under construction" is the continuous physical activity of placing the foundation or continuation of construction above the foundation of any structure or improvement permitted hereunder. Under construction does not include application for or obtaining a building permit, a site plan approval or zoning approval from the appropriate local government agency having jurisdiction over the activity, purchasing construction materials, placing such construction materials on the site, clearing or grading the site (if permitted) in anticipation of construction, site surveying, landscaping work or reactivating construction after substantially all construction activity has remained stopped for a period of two (2) months or more. Licensee acknowledges that failure to have the use under construction within the one (1) year time period will result in immediate termination of this Agreement in accordance with Paragraph 14 herein for failing to comply with the provisions contained herein unless Licensor grants a written extension for a mutually agreed upon time. Any request for an extension of time shall be submitted in writing by Licensee no later than thirty (30) days prior to the expiration of the one (1) year period for the project to be under construction.

16. The term "Licensee" shall be construed as embracing such number and gender as the character of the party or parties require(s) and the obligations contained herein shall be absolute and primary and shall be complete and binding as to each, including its successors and assigns, upon this Agreement being executed by Licensee and subject to no conditions precedent or otherwise.

17. Should any provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. In the event of any litigation arising out of enforcement of this Consent Agreement, the prevailing party in such litigation shall be entitled to recovery of all costs, including reasonable attorneys' fees.

18. Licensee may assign its rights and obligations under this Agreement to a solvent party upon prior written consent of the company, which consent shall not be unreasonably withheld.

The parties have executed this Agreement this _____ day of _____, 2008.

Witnesses:

Signature:
Print Name: _____

Signature:
Print Name: _____

COMPANY:
FLORIDA POWER & LIGHT COMPANY

By: _____
Its: _____
Print Name: _____

Witnesses:

Signature:
Print Name: _____

Signature:
Print Name: _____

LICENSEE:
VILLAGE OF WELLINGTON

By: _____
Its: _____
Print Name: _____

(Corporate Seal)

CCC/DGE
3740#RW.Con (4C)

This Instrument Prepared By:
JOSEPH O'HAGAN - CRE/JB
Florida Power & Light Company
P.O. BOX 14000
Juno Beach, FL 33408

MEMORANDUM OF RIGHT-OF-WAY CONSENT AGREEMENT

THIS MEMORANDUM OF RIGHT-OF-WAY CONSENT AGREEMENT dated this ____ day of _____, 2008, by and between VILLAGE OF WELLINGTON, a Florida municipal corporation (hereinafter referred to as "Licensee"), and FLORIDA POWER & LIGHT COMPANY, a Florida corporation (hereinafter referred to as "Company").

WITNESSETH:

WHEREAS, on the ____ day of _____, 2008, Company and Licensee entered into a written Right-of-Way Consent Agreement, hereinafter referred to as the "Agreement" related to certain property situated in the County of Palm Beach, State of Florida as more particularly set forth in said Agreement and described in Exhibit "A" attached hereto and made a part hereof and hereinafter referred to as the "Lands", and

WHEREAS, the parties are desirous of placing their interest therein as a matter of public record.

NOW THEREFORE, in consideration of the mutual covenants herein contained and the parties intending to be legally bound thereby, the parties hereto agree as follows:

1. The property described in Exhibit "A" is subject to two Right-of-Way Agreements in favor of Company recorded in Deed Book 1031, Page 476 and OR Book 1766, Page 1317 of the Public Records of Palm Beach County, Florida.
2. The Agreement provides, among other things, Licensee's right to construct certain improvements upon the Lands including, but not limited to, utilities landscape buffer, subject to certain conditions and restrictions.
3. The Agreement is assignable to purchasers of all or a portion of the Lands provided that the purchasers assume the obligations under the Agreement and specifically acknowledge and agree that the use of the property and improvements to be placed on the property are strictly limited to those depicted on a certain plan of improvement and are otherwise subject to the terms of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement on the date hereinabove written.

Witnesses:

Company:
FLORIDA POWER & LIGHT COMPANY
a Florida corporation

Signature

By: _____
Its: Corporate Real Estate Project Manager
Print Name: J. T. Corson

Name (Print):

Signature

Name (Print):

Licensee:
VILLAGE OF WELLINGTON
a Florida municipal corporation

Signature:

By: _____
Its: _____
Print Name: _____

Name (Print):

Signature:

Name (Print):

State of Florida)
)ss:
County of Palm Beach)

On this _____ day of _____, 2008, before me, the undersigned Notary Public, personally appeared J. T. Corson, Corporate Real Estate Project Manager of FLORIDA POWER & LIGHT COMPANY, a Florida corporation, personally known to me to be the person who subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of said corporation and that he was duly authorized to do so.

In Witness Whereof, I hereunto set my hand and official seal.

(seal)

NOTARY PUBLIC, STATE OF FLORIDA

Print Name: _____

Commission No.: _____

My Commission Expires:

State of Florida)
)ss:
County of Palm Beach)

On this _____ day of _____, 2008, before me, the undersigned Notary Public, personally appeared _____, _____ of VILLAGE OF WELLINGTON, a Florida municipal corporation, personally known to me to be the person who subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of said municipality and that he was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(seal)

NOTARY PUBLIC, STATE OF

Print Name: _____

Commission No.: _____

My Commission Expires:

65804

RIGHT OF WAY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS that THE ESTATE OF C. OLIVER WELLINGTON of the County of Palm Beach and State of Florida in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, receipt of which is hereby acknowledged, does hereby grant to the Florida Power & Light Company, a corporation organized and existing under the laws of the State of Florida, whose address is P. O. Box 3100, Miami, Florida, and to its successors and assigns, an easement forever for a right of way 240 feet in width to be used for the construction, operation and maintenance of one or more electric transmission and distribution lines, including wires, poles, "H" frame structures, towers, anchors, guys, telephone and telegraph lines and appurtenant equipment, in, over, upon and across the following described lands of the Grantors, situated in the County of Palm Beach and State of Florida and more particularly described as follows:

1. The South 240 feet of the North 395 feet of Section 2, Township 44 South, Range 41 East, Palm Beach County, Florida, less the East 1185 feet and less a tract of land described as:

Begin at a point in the North line of said Section 2 located 100 feet east of the Northwest corner of Section 2, thence run due east along the North line of Section 2 for a distance of 2984.30 feet; thence deflect to the right and run 3844.58 feet on a bearing of S. 00° 49' 04" West to the South line of said Section 2; thence deflect to the right and run 2800 feet on a bearing of N. 89° 39' 24" West along the South line of Section 2; thence deflect to the right and run 3829.61 feet on a bearing of N. 01° 56' 15" West to the point of beginning, containing approximately 6.2 acres.

2. The South 240 feet of the North 395 feet of Sections 3, 4, 5 and 6, Township 44 South, Range 41 East, Palm Beach County, Florida, containing approximately 114.9 acres.

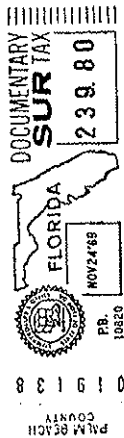
together with the right and privilege to reconstruct, inspect, alter, improve, remove or relocate such transmission and distribution lines on the right of way above described, with all rights

This instrument was prepared by
W. C. Kelly, Jr.
 FLORIDA POWER & LIGHT COMPANY
 BOX 31, WEST PALM BEACH, FLORIDA

and privileges necessary or convenient for the full enjoyment or the use thereof for the above-mentioned purposes, including the right to cut and keep clear all trees and undergrowth and other obstructions within said right of way ornamental shrubbery and/or landscaping, fences, drainage ditches or other improvements approved for installation by the Grantee, excepted. Also the right to trim, top or remove such trees on lands of the Grantors, their successors, heirs or assigns adjoining said right of way that are of such height that may interfere with the proper construction, operation and maintenance of said transmission and distribution lines by being blown or falling into said lines. All debris from such clearing shall be removed within a reasonable period of time.

Grantors, their successors, heirs or assigns reserve the right to cut and remove, at their expense, any and all trees and/or timber lying within said right of way at any time prior to preparations for commencement of construction by Grantee; however in the event Grantors, their successors, heirs or assigns have not removed said trees and/or timber sufficiently in advance to avoid delay in Grantee's use or occupation of right of way, then Grantors, their successors, heirs or assigns waive their right for such removal and Grantee may proceed with clearing in their normal manner.

Grantors hereby grant to the Grantee such rights of ingress and egress over the lands of the Grantor adjoining this right of way easement as shall be necessary for the purpose of exercising said right of way easement herein granted. Such ingress and egress over the adjoining lands of the Grantor by the Grantee or its agents shall be limited to existing roads on said lands and from said roads to the nearest point on said easement to which ingress and egress shall be necessary, except that in case of hurricanes or other storms which render the exist-



ing roads impassable the right of ingress and egress shall extend from the point of impass to the nearest point on said easement. The Grantee and its agents shall at all times while exercising said right of ingress and egress use reasonable care to avoid damage to the adjoining lands of the Grantor or any vegetation or crops or improvements thereon. The Grantee's right of ingress and egress herein granted shall exist until such time as the adjoining lands are subdivided and streets are dedicated and constructed so as to provide the Grantee a reasonable means of ingress and egress to its easement over public highways, and upon the happening of such event, said right of ingress and egress over the adjoining land of the Grantor shall cease and terminate and thereafter be null and void and of no legal effect whatsoever.

Storage of materials by the Grantee within the right of way will be limited to the period of construction and a reasonable time for removal and cleanup of debris afterwards.

The Grantors, however, reserve the right and privilege to use the above-described right of way for agricultural and all other purposes except as herein granted or as might interfere with Grantee's use, occupation or enjoyment thereof, or as might cause a hazardous condition; and provided further by way of illustration and not of limitation to the grant herein made, no portion of the right of way shall be excavated or altered without written permission of the Grantee and no building, structure or obstruction shall be located or constructed on said right of way by the Grantors, their successors, heirs or assigns without written permission of the Grantee.

In addition, the Grantors, their successors, heirs or assigns, specifically reserve the right to construct roadways across the right of way at points mutually acceptable to both Grantee and Grantors and to landscape and/or beautify said right of way in

a manner acceptable to Grantee.

Grantors and Grantee agree the existing facilities or buildings now occupied by personnel of the Acme Drainage District lying within the limits of this right of way agreement may remain in their present location until such time as Grantee advises Grantors, their successors, heirs or assigns that said facilities will interfere with Grantee's occupation and use of said right of way. At that time Grantee will bear the costs and expense or relocating said facilities from the right of way, within a reasonable distance, to a location to be provided by Grantors, their successors, heirs or assigns. Facilities to be relocated at Grantee's cost and expense will be limited to such facilities as they exist on the date of the granting of this right of way agreement and not to any additions or improvements placed within the right of way subsequent to the date of granting.

The following relates to the private grass landing strip located in Section 3, Township 44 South, Range 41 East, lying just south of and parallel to the above described right of way and identified as the Flying C.O.W. Ranch airstrip, operated by A.W.G., Inc.

Grantors, their successors, heirs or assigns in consideration of One Dollar (\$1.00) and other valuable considerations, in hand paid, receipt of which is acknowledged, does hereby agree to realign, relocate or close down, discontinue, cease and desist the use of said grass strip for the purpose of take off or landing of airplanes or aircraft in the event it is determined by the Federal Aviation Administration (FAA) or the Aviation Division of the Department of Commerce of the State of Florida, formerly known as the Florida Development Commission, or any other Federal or State agency in existence at that time having jurisdiction, that the construction of the transmission and

distribution lines to be erected within the above-described right of way would present an obstruction to air navigation or be in violation of any flying safety criteria established by the aforementioned agencies or their successors. The cost and expense of realigning, relocating or closing the airstrip to comply with then existing criteria shall be borne by the Grantors, their successors, heirs or assigns.

The granting of this easement is subject to the existing easements of The Acme Drainage District and other easements and reservations of record.

IN WITNESS WHEREOF, the Grantors have executed this agreement this 27th day of August, 1969.

Signed, sealed and delivered in the presence of:

Janet C. Kennedy
Maudyn Asper
John G. Brown
Richard Brown

ESTATE OF C. OLIVER WELLINGTON

By: Roger W. Wellington
Roger W. Wellington

By: Lucile P. Wellington
Lucile P. Wellington

Ancillary Co-Executors

STATE OF Massachusetts
COUNTY OF Suffolk

I, a Notary Public in and for the County and State aforesaid, do hereby certify that Roger W. Wellington and

Lucile P. Wellington known to me, personally appeared before me and acknowledged the execution of the foregoing instrument for the uses and purposes therein expressed.

WITNESS my hand and official seal in said County and State this 7th day of August, 1969.

Ruth A. Thorn
Notary Public

My Commission expires:

STATE OF New York

COUNTY OF Suffolk

I, a Notary Public in and for the County and State aforesaid,
do hereby certify that Lucile P. Wellington known to me,
personally appeared before me and acknowledged the execution of
the foregoing instrument for the uses and purposes therein
expressed.

WITNESS my hand and official seal in said County and State
this 11th day of August, 1969.

Emory A. Brown
Notary Public

My Commission expires

1970

Notary Public, State of New York
No. 823421
My Term Expires August 1, 1970
(SEAL)



RECORDED 1766 PAGE 1322

Recorded In Official Record Book
Of Palm Beach County, Florida
John B. Dunkle
Clerk of Circuit Court



Big Blue Trace - FPL Corridor

200613

CAPITAL IMPROVEMENTS PROGRAM CAPITAL PROJECT INFORMATION & BUDGET

For Projects over \$100,000

The following worksheets are intended to assist the preparer in providing information on projects included in the five- and ten-year Capital Improvement Program. Each area indicated below represents an important area of information vital to the budgeting, implementation and reporting of the CIP. A complete summary of the information you enter in this workbook appears under the "Summary Form p1" tab for your review prior to submission.

	Yes	No
Is the project an annual maintenance project?	<u>Use form CIP</u>	Proceed
	<u>Maintenance &</u>	
Is the project for purchase of equipment <i>not</i> in TPP Replacement Schedule?	<u>Equipment to submit</u>	Proceed
	<u>project info</u>	

Select the headings below to fill out all information in each area. Select the item on the data list to complete each cell. Once the information is complete, it will appear in the column to the right of the list below the heading.

1. Project Description

<u>Data</u>	Click on heading below to enter info	<u>Entry</u>	<u>Complete</u>
Project Initiation		Existing	Yes
Change from Prior Year CIP		No	Yes
Project Title		Big Blue Trace - FPL Corridor	Yes
Project Number		200613	Yes
Start Year		2006	Yes
Completion Year		2009	Yes
Project Type		Landscaping	Yes
Primary Funding Source		Gas Tax Capital	Yes
Project Status		Construction Phase	Yes
Project Description		The addition of landscaping and improve...	Yes
Justification		To Beautify the roadways where existing...	Yes
Project Alternative		...	No
Core Value Link		Pride in Wellington	Yes
Location Map Hyperlink			No
Location Address		Big Blue Trace	Yes

2. Cost Calculations

<u>Data</u>	<u>Entry</u>	<u>Complete</u>
Project Budget	161,297	Yes
Project Funding Sources	Gas Tax Capital	Yes
Funding Source Amount	161,297	Yes
Operating Budget Impact:		
Total Personnel Cost	-	No
Total Outside Services	-	No
Total Utilities	-	No
Total Materials & Supplies	-	No
Total Cost Benefits	-	No

3. Carryforwards

Estimated carryforward for projects in progress as of 9/30/08:	
	128,000
	Yes

4. Department Prioritization

Consider all projects within your department and rank with #1 being the highest priority:

Department Ranking: out of Total Projects Yes

5. Contact Information

Preparer _____ Phone _____
Contact _____ Phone _____

Please contact the budget office with questions or for additional information.

For use in Budget Book, Presentations, as a reference for procurement purposes and an attachment for bid documents

VILLAGE OF WELLINGTON
PROJECT BUDGET REQUEST FORM

Big Blue Trace - FPL Corridor
Big Blue Trace
Landscaping

Department Rank 3 out of 4

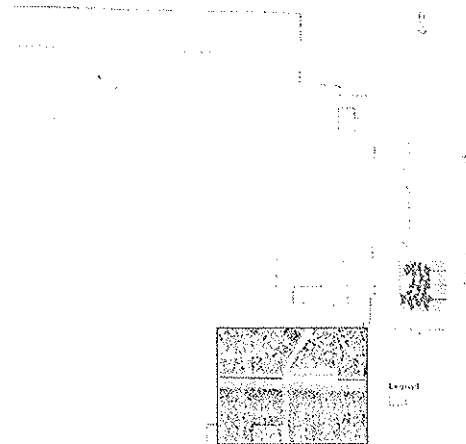
Project #: 200613
Project Status: Construction Phase
Project Start : 2006
Projected Completion: 2009

PROJECT INFORMATION

Project Description:

The addition of landscaping and improvements along right of way at FPL Corridors

PROJECT LOCATION



Project Justification:

To Beautify the roadways where existing FPL corridors intersect

Project is Existing in the 2008/2009 CIP
No Change from prior year CIP

STRATEGIC PLANNING LINK

Leisure Amenities



Pride in Wellington

Project Score NR out of 170

PROJECT FUNDING SCHEDULE

	<u>Total Est</u>	<u>Prior Yrs</u>	<u>Project</u>							
<u>Expenditures (in 000's)</u>	<u>Cost</u>	<u>Funding</u>	<u>Expenditures</u>	<u>2008/2009</u>	<u>2009/2010</u>	<u>2010/2011</u>	<u>2011/2012</u>	<u>2012/2013</u>	<u>Future</u>	
Planning & Studies	-	-	-	-	-	-	-	-	-	-
Design & Permitting	-	-	-	-	-	-	-	-	-	-
Site Costs	-	-	-	-	-	-	-	-	-	-
Construction/Improvements	161	161	33	-	-	-	-	-	-	-
Equipment & Materials	-	-	-	-	-	-	-	-	-	-
Landscaping	-	-	-	-	-	-	-	-	-	-
Other Direct Costs	-	-	-	-	-	-	-	-	-	-
Total	\$ 161	\$ 161	\$ 33	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Project Account 133-2051-539.65-04										

	<u>Total Est</u>	<u>Prior Yrs</u>	<u>Project</u>							
<u>Funding Sources (in 000's)</u>	<u>Cost</u>	<u>Funding</u>	<u>Expenditures</u>	<u>2008/2009</u>	<u>2009/2010</u>	<u>2010/2011</u>	<u>2011/2012</u>	<u>2012/2013</u>	<u>Future</u>	
Gas Tax Capital	161	161	33	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-
Total	\$ 161	\$ 161	\$ 33	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

OPERATING IMPACT

Annual Increase/Decrease:					Total Annual Impact				
Personnel	\$	-	# FTEs	0	Revenues	\$	-		
Other					Cost				
Services	\$	-	Materials	\$ -	Reductions	\$	-	\$ -	

6. A

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: A Proclamation of the Village Council of the Village of Wellington, Florida Recognizing Robert S. Margolis for his Dedicated Service to the Residents of the Village of Wellington

ACTION REQUESTED: Discussion ☒ Approval ☐

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: Council's approval of the Proclamation Recognizing Robert S. Margolis for his dedicated service to the Village of Wellington.

EXPLANATION: This Proclamation is to recognize Robert S. Margolis who served as a Councilman on the Wellington Village Council from April of 2003 until January 5, 2009.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff recommends a Motion by Council approving the Proclamation Recognizing Robert S. Margolis for his dedicated service to the Village of Wellington.

A PROCLAMATION OF THE VILLAGE COUNCIL OF THE
VILLAGE OF WELLINGTON, FLORIDA RECOGNIZING
ROBERT S. MARGOLIS FOR HIS DEDICATED SERVICE TO
THE RESIDENTS OF THE VILLAGE OF WELLINGTON.

WHEREAS, Robert Margolis was first appointed to serve on the Village Council in April, 2003. He was subsequently elected by popular vote to a two-year term in March, 2004 and again for a four-year term in March, 2006. Mr. Margolis served as Vice Mayor from March, 2006 to March, 2008; and

WHEREAS, Mr. Margolis, a long-term Wellington resident, is a seasoned health-care professional having worked for Proctor and Gamble for over 25 years. Prior to serving on the Village Council, Mr. Margolis was actively involved in recreational programs in the Village of Wellington including his long-time service on the Parks & Recreation Advisory Board; and

WHEREAS, Mr. Margolis has always given unselfishly of his time, knowledge and experience during his tenure on the Village Council. His sense of humor, tenacity and a genuine desire to improve the quality of life for the residents in the Village of Wellington has left an indelible mark on our community; and

WHEREAS, the Wellington Village Council wishes to express its sincere and heartfelt gratitude for Mr. Margolis' service to the residents of the Village of Wellington and extends their very best wishes for his continued success in all of his future endeavors.

NOW, THEREFORE, the Village Council of the Village of Wellington, Florida does hereby issue this proclamation recognizing Robert S. Margolis for his dedicated service to the Village of Wellington.

PASSED AND ADOPTED this 24th day of February, 2009.

ATTEST:

WELLINGTON, FLORIDA

BY: _____
Awilda Rodriguez, Village Clerk

BY: _____
Darell Bowen, Mayor

6. B

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY****AGENDA ITEM NAME:** Project Lifesaver of Palm Beach County Presentation**ACTION REQUESTED:** Discussion ☒ Approval ☐**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐**PUBLIC HEARING:** Yes ☐ No ☒**FIRST READING** ☐**SECOND READING** ☐

REQUEST: Michele Damone of the Indian Trail Improvement District along with representatives from the Palm Beach County Sheriff's Office will be in attendance to make a presentation to Council regarding Project Lifesaver of Palm Beach County.

EXPLANATION: At the request of Councilwoman Lizbeth Benacquisto, Michele Damone, along with representatives of the Palm Beach County Sheriff's Office, will be providing a presentation regarding Project Lifesaver and how this state of the art technology can be beneficial within the Village of Wellington.

The Project Lifesaver Emergency Locator system equipment was purchased in FY08 with available funds from the Village's Law Enforcement Services budget for use by Wellington District 8 personnel. The equipment, which was received in December, includes a receiver and directional antennae. The receiver is used in conjunction with special locator wristbands worn by individuals. These wristbands can be purchased by families for their loved ones. These locators can be used to locate missing individuals and are typically purchased for those with Autism, Alzheimer's and other medical conditions which may cause them to wander off or lose their way. This system can also be beneficial in locating missing children.

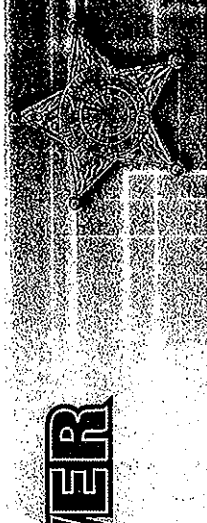
Councilwoman Benacquisto is requesting that Council consider utilizing the Village's facilities, i.e. the Village website, Channel 18 and flyers included in utility billings to inform our residents and make them aware of this potentially lifesaving service. Attached for your review is information on the formation of Project Lifesaver and a description of its uses and benefits.

FISCAL IMPACT: N/A.**RECOMMENDATION:** N/A.



PROJECT LIFESAVER

of Palm Beach County

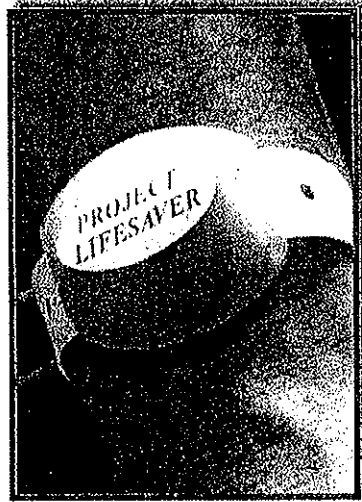


Project Lifesaver was established in April of 1999 as an initiative of the 43rd Search and Rescue Company of the Chesapeake Sheriff's Office. Project Lifesaver's mission is to use state of the art technology in assisting those who care for victims of Alzheimer's and other Related Mental Dysfunction Disorders (ARMDD) and victims who become lost. These victims include the elderly and even the youngest in our community who are afflicted with dementia, autism or developmental disorders. There are no boundaries - no one is immune!

The Project Lifesaver program places personalized radio transmitters on identified persons with ARMDD who may wander away from the safety of their homes. These transmitters assist caregivers and local emergency agencies in locating those who cannot help themselves.

Project Lifesaver of Palm Beach County formed a committee in late 2006 with FAU/CARD's Dr. Jack Scott identifying the initial need for the area. The committee was formed with both the autism and Alzheimer's community represented along with the Palm Beach County Sheriff's Office as the leading public safety agency.

In 2007, the Autism Project of Palm Beach County was selected as the lead agency to seek funding and training began in October, 2007. The committee quickly realized since Palm Beach County is the largest county east of the Mississippi River that it needed to focus on the management of the lifesaving wristbands.



The wristbands require monthly maintenance including a mandatory every 30 day battery change. This will require all participants to sign up through a managing agency in your area.

Michelle Damone, Project Manager will be working towards encouraging more agencies in Palm Beach County to join Project Lifesaver so we can serve more of our Alzheimer's, autism, dementia and other brain related disorders population. A Project Lifesaver participant must be a known wanderer and the program requires each participant to have a care giver. Once identified missing through 911, Project Lifesaver's mission is to return your missing loved one home.

"The PBSO is looking forward to working with the APPBC in implementing this technology in our canine cars and helicopters, and training our officers and volunteers."

- Ric Bradshaw
Sheriff Palm Beach County

"The collaboration of agencies that serve individuals with autism spectrum disorders and Alzheimer's disease is critical to ensuring that wandering or lost persons do not suffer from avoidable tragedies in the future"

- Richard Busto
APPBC President

"There are approximately 50,000 persons with Alzheimer's disease and related disorders in Palm Beach County, and the number are steadily increasing as the age 65-plus segment of our population grows"

- Ellen Brown
CEO of the Southeast Florida Chapter of the Alzheimer's Association.

"As the number of individuals with autism spectrum disorders in our Palm Beach County registry increase, the need for tracking technology to locate wanderers continues to grow"

- Dr. Jack Scott
FAU/CARD Director

7. A

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: ORDINANCE 2009-06 LANDSCAPE IRRIGATION

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☒

REQUEST: Approval and adoption following Second of Reading of Ordinance 2009-06.

EXPLANATION: This ordinance proposes to adopt SFWMD rules, regulations and restrictions as the Village's with regard to irrigation within the Village. The intent of the Ordinance is to have the landowners in Wellington subject to one set of regulations for irrigation.

FISCAL IMPACT: None.

RECOMMENDATION: Approve Ordinance 2009-06 after Second Reading.

ORDINANCE NO. 2009-06

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA RELATING TO LIMITATIONS ON LANDSCAPE IRRIGATION AMENDING CHAPTER 30 "ENVIRONMENT" ARTICLE IV "WATER CONSERVATION SECTION 30-144 "RESTRICTIONS" TO ADOPT SOUTH FLORIDA WATER MANAGEMENT DISTRICT STANDARD AND RESTRICTIONS FOR THE SCHEDULE OF ALLOWABLE TIMES TO OPERATE IRRIGATION SYSTEMS, PROVIDING FOR A REPEALER CLAUSE, PROVIDING A SAVINGS CLAUSE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village Council of the Village of Wellington, Florida recognizing that Wellington, located in South Florida Environment has, and will in the future, experience drought conditions and understands that water is a limited resource; and

WHEREAS, in an effort to encourage conservation of water and reduce the level of confusion concerning changing restrictions on the usage of water for landscaping the Village Council wishes to coordinate restrictions on irrigation within the Village with South Florida Water Management District regulations on a permanent basis; and

WHEREAS, the intent of this ordinance is to provide regulations that are identical to South Florida Management District's regulations regardless of whether the District has imposed the initial phases of their declaration of a water shortage restriction.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA that:

SECTION 1: The above recitals are true and correct.

SECTION 2: Chapter 30 "Environment" Article IV "Water Conservation" Section 30-144 "Restrictions" is hereby amended to read as follows:

(a) ~~Any~~ All landscape irrigation shall adhere to the schedule of times defined by South Florida Water Management District as the schedule currently exists or may be modified by standards, rules, regulations or restrictions imposed by the South Florida Water Management District Board. ~~shall be restricted to the hours of 12:00 a.m. to 9:00 a.m. All other daytime irrigation is prohibited.~~

(b) It shall be unlawful to operate or cause the operation of any irrigation system or device in a manner causing water to be wasted, including watering of impervious areas, other than which may occur incidental to the proper operation of the irrigation system.

(c) It shall be unlawful to operate or cause the operation of any irrigation system or device in a manner causing water to be directed onto any sidewalk or paved portion of a road right of way.

(d) Any irrigation system installed in new construction shall be a non-potable water irrigation system. These systems shall be restricted to surface, well water, or water re-use only; the use of village potable water is prohibited.

Note – The provisions of the above subsection (d) shall not apply to single-family residences which have been issued building permits prior to June 11, 1999.

(e) New installations of automatic irrigation systems shall be equipped with a rain sensor device or switch which will override the irrigation cycle of the sprinkler system when adequate rainfall has occurred, pursuant to F.S. § 373.62.

~~(f) Any declaration of water shortage restrictions, Phase I, II, III and IV issued by South Florida Water Management District in times of drought shall be followed by and enforced immediately upon notification. South Florida Water Management District's Modified Phase I water-use restrictions are permanent restrictions. Failure to comply with the requirements of these restrictions will constitute a violation of the Village's Code of Ordinances.~~

SECTION 3: Should any section paragraph, sentence, clause, or phrase of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion or part thereof, other than the part to be declared invalid.

SECTION 4: Should any section, paragraph, sentence, clause, or phrase of any prior Village Ordinance, Resolution, or municipal Code provision, then in that event the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 5: This Ordinance shall become effective immediately upon adoption of the Village Council of the Village of Wellington following second reading.

PASSED this ____ day of February, 2009, upon first reading.

PASSED AND ADOPTED this ____ day of _____, 2009, on second and final reading.

VILLAGE OF WELLINGTON

	FOR	AGAINST
BY: _____ Darell Bowen, Mayor	_____	_____
_____ Dr. Carmine A. Priore, Vice Mayor	_____	_____
_____ Lizbeth Benacquisto, Councilwoman	_____	_____
_____ Matt Willhite, Councilman	_____	_____
_____ Howard K. Coates, Jr., Councilman	_____	_____

ATTEST:

BY: _____
Awilda Rodriguez, Village Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: _____
Jeffrey S. Kurtz, Village Attorney

8. A

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY****AGENDA ITEM NAME:** RESOLUTION AC2009-02 (FAR NIENTE STABLES IV, LLC)

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE ACME IMPROVEMENT DISTRICT APPROVING THE CONVEYANCE OF RIGHT OF WAY PROPERTY HAVING BEEN A PORTION OF AN ABANDONED SECTION OF LAKE WORTH ROAD TO FAR NIENTE STABLES VI, LLC BY QUIT CLAIM DEED; AND PROVIDING AN EFFECTIVE DATE.

ACTION REQUESTED: Discussion ☒ Approval ☒**BUDGET AMENDMENT****REQUIRED:** Yes ☐ No ☒ See Below ☐**PUBLIC HEARING:** Yes ☐ No ☒**FIRST READING** ☐**SECOND READING** ☐**REQUEST:** Approve Resolution AC2009-02 authorizing ACME Improvement District to convey Lake Worth Right of Way property to Far Niente Stable VI, LLC.

EXPLANATION: ACME Improvement District has interest or a claim of interest in property which was formerly part of the Lake Worth Right of Way. The Right of Way was conveyed to Palm Beach County by Grand Prix Associates, LLC prior to the Village's incorporation. Following incorporation Palm Beach County transferred jurisdiction of the road right of way to the Village.

Having previously determined that Lake Worth Road should not be extended west to Flying Cow Road, the Village has over time abandoned any interest in the right of way west of Grand Prix Farms. The current successors in title to Grand Prix Associates, LLC are Far Niente Stables VI, LLC. Far Niente Stables VI, LLC has replatted the southern portion of Grand Prix Farms and as a part of that approval process, sought the abandonment of a portion of Lake Worth Right of Way adjacent to the western portion of their property.

That abandonment was approved by Village of Wellington Resolution AC2009-02 and the ACME Improvement District contemporaneously approved Resolution AC2009-01 giving notice of their intent to transfer their interest in the abandoned Right of Way to Far Niente Stables VI, LLC.

The instant resolution approves the conveyance and authorizes the transfer of property. The closing is set for March 2, 2009 and the expenses are to be paid by Far Niente Stables VI, LLC are anticipated to be less than \$1500.00

FISCAL IMPACT: N/A.

RECOMMENDATION: Approval of Resolution AC2009-02 authorizing the conveyance of ACME's interest in the abandoned Lake Worth Right of Way to Far Niente Stables VI, LLC.

RESOLUTION NO. AC2009 - 02

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE ACME IMPROVEMENT DISTRICT APPROVING THE CONVEYANCE OF RIGHT OF WAY PROPERTY HAVING BEEN A PORTION OF AN ABANDONED SECTION OF LAKE WORTH ROAD TO FAR NIENTE STABLES VI, LLC BY QUIT CLAIM DEED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to the Resolution No. R2009-02, the Village Council has vacated and abandoned certain right of way; and

WHEREAS, the Acme Improvement District owns the C-24 canal right of way by virtue of a deed recorded at Deed Book 1118 Page 89 of the Public Records of Palm Beach County; and

WHEREAS, that C-24 canal right of way directly abuts the portion of the Lake Worth Road extension right of way abandoned by Village of Wellington Resolution R2009-02; and

WHEREAS, in Resolution AC2009-01 the Board of Supervisors has determined that the land abandoned by Village of Wellington Resolution 2009-02 is not needed by the Acme Improvement District for any purpose and is therefore Surplus Property (hereinafter referred to as Surplus Property); and

WHEREAS, the Board of Supervisors has determined that the Surplus Property's only potential value is to be consolidated with the adjoining property to the north owned by Far Niente Stables VI, LLC; and

WHEREAS, the Board of Supervisors has concluded that it is in the public and district's best interest for the property to be returned to private ownership so that it may be taxed and assessed, this bring value to both the Village and the District; and

WHEREAS, the notice of intention to convey District owned lands to Far Niente Stables VI, LLC has been duly advertised.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISOR OF THE ACME IMPROVEMENT DISTRICT, FLORIDA that:

SECTION 1. The foregoing recitals are true and correct and incorporated herein.

SECTION 2. The Surplus Property is not reasonably useable by any party other than Far Niente Stables VI, LLC to be incorporated into their proposed development.

SECTION 3. A sale of the Surplus Property to a party having no interest in any land directly adjacent to the Surplus Property would only serve to create a nuisance to the District and the adjoining property owners.

SECTION 4. The District has no need or intended use for the Surplus Property.

SECTION 5. The Board of Supervisors authorizes the conveyance of the Surplus Property to Far Niente Stables VI, LLC Inc. by quit claim deed in consideration for the reimbursement of any and all costs, expenses and attorney's fees that may be incurred in the preparation and execution of the conveyance instrument as well as any costs associated with any and all necessary advertising related to the conveyance. The Board President is authorized to execute the quit claim deed conveying the District's interest (attached hereto as Exhibit "A").

SECTION 6. The District Manager and Attorney for the Board are hereby authorized and directed to do all things necessary so that the closing as described above may take place on or about 10:00am on March 2, 2009 with the closing to take place at the District offices located at 14000 Greenbriar Blvd., Wellington, Florida, 33414.

SECTION 7. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this ____ day of February, 2009.

ATTEST:

ACME IMPROVEMENT DISTRICT, FLORIDA

BY: _____
Awilda Rodriguez, Board Secretary

BY: _____
Darell Bowen, President

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: _____
Jeffrey S. Kurtz, Board Attorney

THIS INSTRUMENT PREPARED BY
JEFFREY S. KURTZ, ESQ.
AND RETURN TO: **W/C 168**
DANIEL DOORAKIAN, ESQ.
MOYLE, FLANIGAN, KATZ, BRETON, WHITE
& KRASKER, P.A.
13501 SOUTH SHORE BLVD., SUITE 103
WELLINGTON, FL 33414

Parcel Identification No:

QUITCLAIM DEED

THIS QUITCLAIM DEED, made this ____ day of **January, 2009**, between **VILLAGE OF WELLINGTON**, a Florida municipal corporation, whose address is **14000 Greenbriar Blvd., Wellington, FL 33414**, Grantor, and **FAR NIENTE STABLES VI, LLC**, a Florida limited liability company, whose address is **14440 Pierson Road, Wellington, FL 33414**, Grantee.

WITNESSETH

That the Grantor, for and in consideration of the sum of --TEN & NO/100 (\$10.00)--DOLLARS, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby remises, releases and quit-claims unto Grantee, its successors and/or assigns forever all of the right, title, interest, claim and demand (including, without limitation, any fee simple reversionary, remainder, dedication, right-of-way or easement interest) which Grantor has within the following described land, situate, lying and being in the County of **PALM BEACH**, State of Florida, to-wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

To Have and to Hold the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of Grantor, either in law or equity, for the use, benefit and profit of the said Grantee forever.

In Witness Whereof, the Grantor has hereunto set its authorized hands and seal the day and year first above written.

WITNESS:

VILLAGE OF WELLINGTON

BY: _____
Darell Bowen, Mayor

Witness as to both

Print name _____

Witness as to both

Print name _____

ATTESTS:

BY: _____
Awilda Rodriguez, Village Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
Jeffrey S. Kurtz, Village Attorney

STATE OF FLORIDA
COUNTY OF PALM BEACH

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by Darell Bowen, Mayor and Awilda Rodriguez, Village Clerk, on behalf of the Village of Wellington as Grantee herein and who are personally known to me or who have produced _____ as identification.

WITNESS my hand and official seal this _____ day of January, 2009.

Notary Public
My Commission Expires:

LAKE WORTH ROAD RIGHT-OF-WAY
AID CANAL C-2 TO SOUTH ROAD

LEGAL DESCRIPTION:

A PARCEL OF LAND LYING IN THE WEST ONE-HALF OF SECTION 20, TOWNSHIP 44 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 20, THENCE NORTH 00°50'05" EAST ALONG THE WEST LINE OF THE SOUTH ONE-HALF OF SAID SECTION 20, A DISTANCE OF 50.00 FEET TO AN INTERSECTION WITH THE NORTH RIGHT OF WAY LINE OF THE ACME IMPROVEMENT DISTRICT C-24 CANAL, AS RECORDED IN DEED BOOK 1118, PAGE 89, PALM BEACH PUBLIC RECORDS; THENCE SOUTH 89°28'02" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING: THENCE NORTH 00°50'05" EAST PARALLEL SAID WEST LINE OF SECTION 20, A DISTANCE OF 120.00 FEET TO A LINE 170.00 FEET NORTH OF AND PARALLEL WITH, AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SOUTH ONE-HALF OF SECTION 20; THENCE SOUTH 89°28'02" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 1843.30 FEET; THENCE NORTH 45°31'58" EAST, A DISTANCE OF 16.97 FEET TO AN INTERSECTION WITH A LINE 182.00 FEET NORTH OF AND PARALLEL WITH, AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SOUTH ONE-HALF OF SECTION 20; THENCE SOUTH 89°28'02" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 23.78 FEET; THENCE SOUTH 00°46'59" WEST, A DISTANCE OF 132.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID ACME IMPROVEMENT DISTRICT C-24 CANAL; THENCE NORTH 89°28'02" WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 1879.13 FEET TO THE POINT OF BEGINNING.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

RESOLUTION NO. AC2009 - 01

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE ACME
IMPROVEMENT DISTRICT GIVING NOTICE OF THEIR INTENT TO
CONVEY RIGHT OF WAY PROPERTY HAVING BEEN A PORTION OF
AN ABANDONED SECTION OF LAKE WORTH ROAD TO FAR NIENTE
STABLES VI, LLC; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Grand Prix Associates, LLC, did convey by Right of Way Deed to Palm Beach County a 120' strip of land to become a part of the Lake Worth Road extension; and

WHEREAS, the Lake Worth Road extension Right of Way was turned over to the Village of Wellington after its incorporation as a municipality; and

WHEREAS, the Lake Worth Road extension to the west of the property conveyed by Grand Prix Associates, LLC, has been abandoned; and

WHEREAS, pursuant to the Resolution No. R2009-02, the Village Council has vacated and abandoned its interest in the western portion of the right of way conveyed by Grand Prix Associates, LLC; and

WHEREAS, the Acme Improvement District owns the C-24 canal right of way by virtue of a deed recorded at Deed Book 1118 Page 89 of the Public Records of Palm Beach County; and

WHEREAS, that C-24 canal right of way directly abuts the southern portion of the Lake Worth Road extension right of way abandoned by Village of Wellington Resolution R2009-02 (such southern portion being more particularly described in Exhibit "A"); and

WHEREAS, the Board of Supervisors has determined that the land described in Exhibit "A" is not needed by the Acme Improvement District for any purpose and is therefore surplus property; and

WHEREAS, Far Niente Stable VI, LLC, as the successor in title to Grand Prix Associates, owns the lands immediately to the north of the lands abandoned by virtue of R2009-02, and therefore holds title in the northern 60' of the abandoned lands; and

WHEREAS, the southern 60 foot strip abandoned by the Village thru R2009-02 (as more particularly described in Exhibit "A") is herein declared surplus, and hereinafter referred to as "Surplus Property" being 60' by approximately 1875 feet is not capable of being developed in any way as it does not have nor is there a possibility of it having sufficient frontage on a road right of way to be developed; and

WHEREAS, the Board of Supervisors has determined that Surplus Property's only potential value is if it were to be consolidated with the adjoining property to the north owned by Far Niente Stables VI; and

1 **WHEREAS**, the Board of Supervisors has concluded that it is in the public and
2 district's best interest for Surplus Property to be returned to private ownership so that it may
3 be taxed and assessed, thus bringing value to both the Village and the District; and
4

5 **WHEREAS**, the notice of intention to sell District owned lands must be advertised
6 three times in three consecutive weeks 30-45 days before the sale takes place.
7

8 **NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE**
9 **VILLAGE OF WELLINGTON, FLORIDA** that:
10

11 **SECTION 1.** The foregoing recitals are true and correct and corporated herein.
12

13 **SECTION 2.** The Surplus Property is not reasonably useable by any party other than
14 Far Niente Stables VI, LLC to be incorporated into their proposed development.
15

16 **SECTION 3.** A sale of the Surplus Property to a third party would only serve to create
17 a nuisance to the District and the adjoining property owners.
18

19 **SECTION 4.** The District has no need or intended use for the Surplus Property.
20

21 **SECTION 5.** It is the intent of the Board of Supervisors to convey the Surplus
22 Property to Far Niente Stables VI, LLC by quit claim deed in consideration for
23 reimbursement of any and all costs, expenses and attorney's fees that may be incurred in
24 the preparation and execution of the conveyance instrument as well as any costs
25 associated with any and all necessary advertising related to the conveyance.
26

27 **SECTION 6.** The District Manager and Attorney for the Board are hereby authorized
28 and directed to do all things necessary so that the conveyance as described above may be
29 approved by the Board at a subsequent meeting.
30

31 **SECTION 7.** This Resolution shall become effective immediately upon adoption.
32

33 **PASSED AND ADOPTED** this 13th day of January, 2009.
34
35

36 **ATTEST:**

ACME IMPROVEMENT DISTRICT

37
38
39 BY: Awilda Rodriguez
40 Awilda Rodriguez, Board Secretary
41

42
43 BY: Darell Bowen
44 Darell Bowen, President
45

46 **APPROVED AS TO FORM AND**
47 **LEGAL SUFFICIENCY**

48 BY: Jeffrey S. Kurtz
49 Jeffrey S. Kurtz, Board Attorney

RESOLUTION NO. R2009-02

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, TO VACATE, ABANDON, DISCONTINUE AND CLOSE 5.18 ACRES OF A PORTION OF THE FUTURE LAKE WORTH ROAD EXTENSION RIGHT-OF-WAY FROM SOUTH ROAD WEST TO THE ACME IMPROVEMENT DISTRICT C-2 CANAL LOCATED 1.25 MILES WEST OF THE INTERSECTION OF LAKE WORTH ROAD AND SOUTH SHORE BOULEVARD, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village Council of the Village of Wellington, Florida ("Village"), as the governing body, pursuant to the authority vested in Chapter 54, Code of Ordinances, known as the Village of Wellington Right-of-Way Abandonment Ordinance, has received a petition for the vacation / abandonment of 5.18 acres of a portion of the Future Lake Worth Road Extension Right-of-Way, hereinafter described as the "right-of-way", and depicted on the survey attached hereto as Exhibit "A"; and

WHEREAS, said petition to vacate said right-of-way was submitted by Michael F. Sexton, P.E., on behalf of Far Niente Stables VI, LLC; and

WHEREAS, said petition complies with the terms and conditions of the vacation as set forth in said Ordinance.

NOW THEREFORE, BE IT RESOLVED THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA that

Section 1: The foregoing recitals are hereby affirmed and ratified.

Section 2: The 5.18 acre portion of the Future Lake Worth Road Extension Right-of-Way is recorded in Official Record Book 6601, Page 142 of the Public Records of Palm Beach County, Florida is hereby vacated and closed, and the Village Council does hereby renounce and disclaim any right or interest of the Village of Wellington and the Public, in the right-of-way as illustrated on the survey attached hereto as Exhibit "A"; and made part of hereof.

Section 3: Notice of the adoption of this Resolution shall be made to the property owners within 300 feet of the area to be abandoned and published once in the Palm Beach Post within thirty (30) days of the date of adoption of this Resolution in accordance with Chapter 54, Code of Ordinances.

Section 4: A certified copy of this Resolution shall be recorded in the public records in accordance with Chapter 54, Code of Ordinances.

Section 5: The provisions of this Resolution shall become effective immediately upon adoption.

Section 6: The Village Council's determination of whether to approve the petition, being a legislative determination, is final and binding, and is not subject to appeal or judicial review.

PASSED AND ADOPTED THIS 13th day of January, 2009.

ATTEST:

VILLAGE OF WELLINGTON, FLORIDA

BY: 
Awilda Rodriguez, Village Clerk

BY: 
Darell Bowen, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

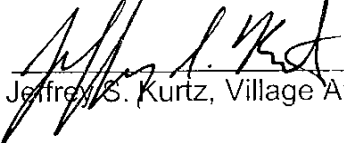
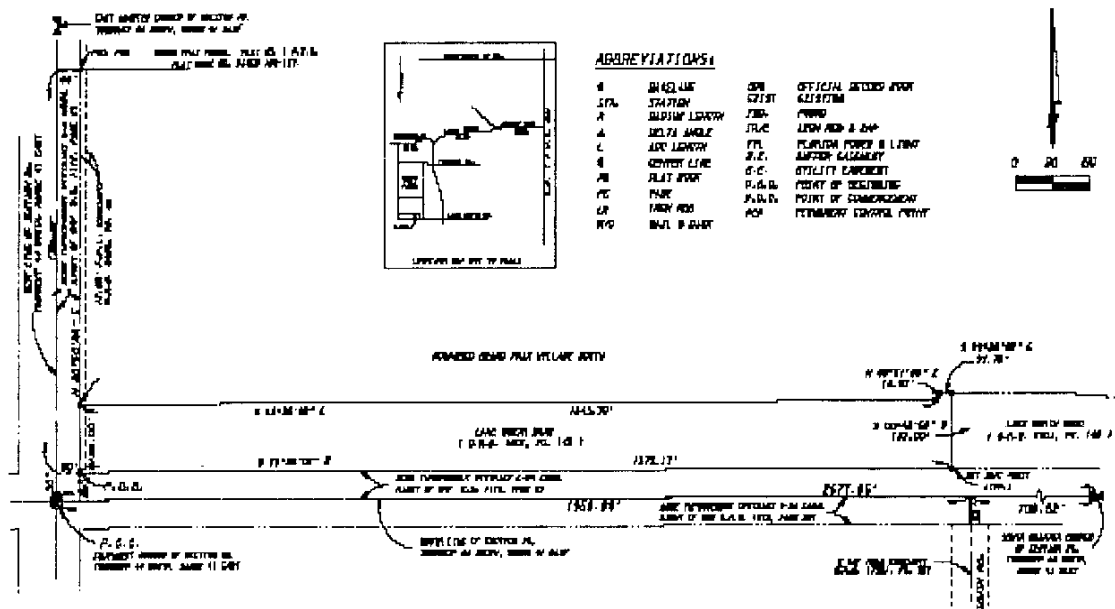
BY: 
Jeffrey S. Kurtz, Village Attorney

Exhibit "A"

Survey



LINK: www.fox.com

[illegible][illegible]

RECEIVED 1-17-80; REVISED 4-10-80; ACCEPTED 4-10-80

DEVELOPMENT

2. MOTION: THERE MAY BE ADDITIONAL INFORMATION THAT ARE NOT DISCLOSED BY THIS PARTY BUT ARE AS GOOD AS THE OTHER SIDE'S AS PUBLIC INFORMATION.

IF, EMPLOYEE JUMP OFFEND ANY RULES OF THE SOCIETY LEAVE OF THE JUDICIAL CHAIRMAN OF
SECTION 11, FROM 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 263

工 日 数 按 照 本 局 工 日 定 额 表 开 列 的 工 日 数 计 算 工 日 数 按 照 本 局 工 日 定 额 表 开 列 的 工 日 数 计 算

7. MINORITIES WILL FACE, IF ANY, MORE EXPENSES FOR THE SET DESIGN THAN THE MAJORITY GROUP BECAUSE:

● 日本料理

[illegible]

NOT BEING IN POSSESSION OF THE INFORMATION REQUESTED, THE
AGENCY IS NOT PROVIDING THE INFORMATION REQUESTED.

JOHN CHRISTIAN MURPHY JR.
7000 WEST BROAD ST., SUITE 200
MILLPIT, FLORIDA 32189
407 851 0077

DISPOSITION, NUMBER AND DATE
 MAILED TO BUREAU
 AND FROM STATE OF PENNSYLVANIA
 1-6-50 10:00

ALBANY REPORT

**LAKE WORTH ROAD
ABANDONMENT TRACT**
GRAND JURY AND JUDICIAL
INVESTIGATION, 1970-1971



RESOLUTION NO. R2009-02

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, TO VACATE, ABANDON, DISCONTINUE AND CLOSE 5.18 ACRES OF A PORTION OF THE FUTURE LAKE WORTH ROAD EXTENSION RIGHT-OF-WAY FROM SOUTH ROAD WEST TO THE ACME IMPROVEMENT DISTRICT C-2 CANAL LOCATED 1.25 MILES WEST OF THE INTERSECTION OF LAKE WORTH ROAD AND SOUTH SHORE BOULEVARD, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village Council of the Village of Wellington, Florida ("Village"), as the governing body, pursuant to the authority vested in Chapter 54, Code of Ordinances, known as the Village of Wellington Right-of-Way Abandonment Ordinance, has received a petition for the vacation / abandonment of 5.18 acres of a portion of the Future Lake Worth Road Extension Right-of-Way, hereinafter described as the "right-of-way", and depicted on the survey attached hereto as Exhibit "A"; and

WHEREAS, said petition to vacate said right-of-way was submitted by Michael F. Sexton, P.E., on behalf of Far Niente Stables VI, LLC; and

WHEREAS, said petition complies with the terms and conditions of the vacation as set forth in said Ordinance.

NOW THEREFORE, BE IT RESOLVED THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA that

Section 1: The foregoing recitals are hereby affirmed and ratified.

Section 2: The 5.18 acre portion of the Future Lake Worth Road Extension Right-of-Way is recorded in Official Record Book 6601, Page 142 of the Public Records of Palm Beach County, Florida is hereby vacated and closed, and the Village Council does hereby renounce and disclaim any right or interest of the Village of Wellington and the Public, in the right-of-way as illustrated on the survey attached hereto as Exhibit "A"; and made part of hereof.

Section 3: Notice of the adoption of this Resolution shall be made to the property owners within 300 feet of the area to be abandoned and published once in the Palm Beach Post within thirty (30) days of the date of adoption of this Resolution in accordance with Chapter 54, Code of Ordinances.

Section 4: A certified copy of this Resolution shall be recorded in the public records in accordance with Chapter 54, Code of Ordinances.

FILE NUM 20090044881 OR BOOK PAGE 230724518 DATE: 02M022009 11:39:10 Pgs 1518 - 1522 (5pgs)
Sharon R. Bock, CLERK & COMPTROLLER

Section 5: The provisions of this Resolution shall become effective immediately upon adoption.

Section 6: The Village Council's determination of whether to approve the petition, being a legislative determination, is final and binding, and is not subject to appeal or judicial review.

PASSED AND ADOPTED THIS 13th day of January, 2009.


ATTEST:

VILLAGE OF WELLINGTON, FLORIDA

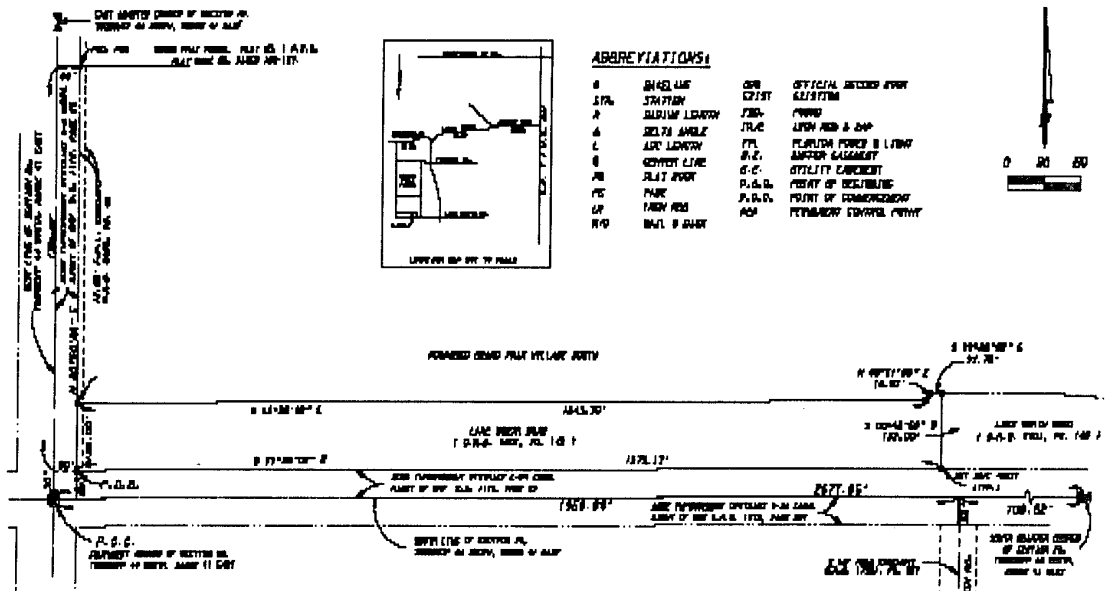
BY: 
Awilda Rodriguez, Village Clerk

BY: 
Darell Bowen, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: 
Jeffrey S. Kurtz, Village Attorney

Survey



LITEL COMPUTATION

1. PARCEL OF LAND 17400 PM 2ND AVE. SOUTHWEST OF SEATTLE WA. PROPERTY OF MRS. JANE G. SMITH. PUBLIC ROAD ADJUT. PLANNING
BETTER BEING PARTICULARLY DESCRIBED AS FOLLOWS:

[illegible]

FOR THE RECORD: THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION

REPORT

7. NOTHING THERE MAY BE ADDITIONAL INFORMATION THAT ARE NOT RECEIVED BY THIS AGENCY THAT MAY BE USED AS THE BASIS FOR ANY OTHER ACTION.

P. EMERSON LEAF REPORT THE STORY OF THE CITY LIFE OF THE JEWELRY CRAFTSMAN OF
BOSTON ST. THE NEW YORK THE NEW YORK THE NEW YORK THE NEW YORK THE NEW YORK THE NEW YORK

2. FIELD NUMBER AND LOCATION OF SPECIMEN, DATE, SEX, AGE

4. MINIMUM PAY: \$10.00 PER HOUR. THE COMPANY WILL PAY THE MINIMUM PAY FOR THE FIRST 40 HOURS OF EACH WEEK. THE COMPANY WILL PAY THE MINIMUM PAY FOR THE FIRST 40 HOURS OF EACH WEEK. THE COMPANY WILL PAY THE MINIMUM PAY FOR THE FIRST 40 HOURS OF EACH WEEK.

CONFIDENTIAL

[illegible]

NOT VALID IN PROOF OF ITINERARY AND CHARGES. SEE
PAGE 10 OF BROCHURE FOR MORE INFORMATION AND NOTES.

JAMES CONSTRUCTION SERVICES INC.
7000 WEST 10TH AVENUE, SUITE 200
DENVER, COLORADO 80202
303 733 0000

PROSECUTION, DEFENSE AND JURY
 SHOULD BE NOTED
 AND OTHER STATE OF FLORIDA
 J. B. JONES

ARMED AND DANGEROUS

**LAKE WORTH ROAD
ABANDONMENT TRACT**
CLASCO FISH AND WILDLIFE
WILLIAMSBURG, PENNSYLVANIA

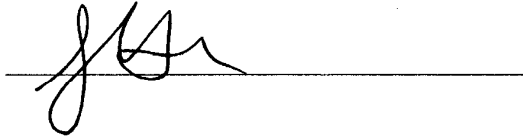
THE PALM BEACH POST

Published Daily and Sunday
West Palm Beach, Palm Beach County, Florida

PROOF OF PUBLICATION

STATE OF FLORIDA
COUNTY OF PALM BEACH


Before the undersigned authority personally appeared **Janet Taylor Fisher**, who on oath says that she is **Classified Call Center Manager** of The Palm Beach Post, a daily and Sunday newspaper, published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertising for a **Notice** in the matter of **Intent To Abandon** was published in said newspaper in the issues of **December 24, 2008**. Affiant further says that the said The Post is a newspaper published at West Palm Beach, in said Palm Beach County, Florida, and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, daily and Sunday and has been entered as second class mail matter at the post office in West Palm Beach, in said Palm Beach County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she/he has neither paid nor promised any person, firm or corporation any discount rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper. Also published in Martin and St. Lucie Counties.



Sworn to and subscribed before 24th day of December, A.D. 2008



Personally known XX or Produced Identification _____
Type of Identification Produced _____

NOTARY PUBLIC-STATE OF FLORIDA
 Karen M. McLinton
Commission #DD832672
Expires: NOV. 15, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

NO. 3708369
NOTICE OF INTENT TO
ABANDON
IT IS THE INTENT OF FARNIENTE STABLES VI, LLC, OWNER, TO PETITION THE VILLAGE OF WELLINGTON COUNCIL TO VACATE, ABANDON, DISCONTINUE AND CLOSE 5.18 ACRES OF A PORTION OF THE FUTURE LAKE WORTH ROAD EXTENSION RIGHT-OF-WAY FROM SOUTH ROAD WEST TO THE ACME IMPROVEMENT DISTRICT C-2 CANAL LOCATED 1.25 MILES WEST OF THE INTERSECTION OF LAKE WORTH ROAD AND SOUTH SHORE BOULEVARD, LEGALLY DESCRIBED AS FOLLOWS:
SAID LANDS SITUATE IN THE VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA.
LEGAL DESCRIPTION:
A PARCEL OF LAND LYING IN THE WEST ONE-HALF OF SECTION 20, TOWNSHIP 44 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 20, THENCE NORTH 00°50'05" EAST ALONG THE WEST LINE OF THE SOUTH ONE-HALF OF SAID SECTION 20, A DISTANCE OF 50.00 FEET TO AN INTERSECTION WITH THE NORTH RIGHT OF WAY LINE OF THE ACME IMPROVEMENT DISTRICT C-24 CANAL, AS RECORDED IN DEED BOOK 1118, PAGE 89, PALM BEACH PUBLIC RECORDS; THENCE SOUTH 89°28'02" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°50'05" EAST PARALLEL SAID WEST LINE OF SECTION 20, A DISTANCE OF 120.00 FEET TO A LINE 170.00 FEET NORTH OF AND PARALLEL WITH, AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SOUTH ONE-HALF OF SECTION 20; THENCE SOUTH 89°28'02" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 1843.30 FEET; THENCE NORTH 45°31'58" EAST, A DISTANCE OF 16.97 FEET TO AN INTERSECTION WITH A LINE 182.00 FEET NORTH OF AND PARALLEL WITH, AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SOUTH ONE-HALF OF SECTION 20; THENCE SOUTH 89°28'02" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 23.78 FEET; THENCE SOUTH 00°46'59" WEST, A DISTANCE OF 132.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID ACME IMPROVEMENT DISTRICT C-24 CANAL; THENCE NORTH 89°28'02" WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 1879.13 FEET TO THE POINT OF BEGINNING, CONTAINING 5.18 ACRES, MORE OR LESS.
THE VACATION/ABANDONMENT PETITION WILL BE CONSIDERED BEFORE THE VILLAGE COUNCIL ON JANUARY 13, 2009 AT 7:00 P.M. AT THE VILLAGE COMMUNITY CENTER.
PUB: The Palm Beach Post, December 24, 2008.

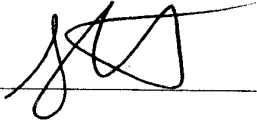
THE PALM BEACH POST

Published Daily and Sunday
West Palm Beach, Palm Beach County, Florida

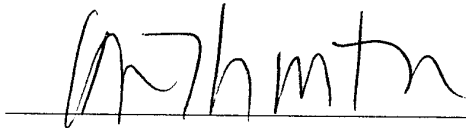
PROOF OF PUBLICATION

STATE OF FLORIDA
COUNTY OF PALM BEACH

Before the undersigned authority personally appeared **Janet Taylor Fisher**, who on oath says that she is **Classified Call Center Manager** of The Palm Beach Post, a daily and Sunday newspaper, published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertising for a **Notice** in the matter of **Adopt Resolution R2009-02** was published in said newspaper in the issues of **January 30, 2009**. Affiant further says that the said The Post is a newspaper published at West Palm Beach, in said Palm Beach County, Florida, and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, daily and Sunday and has been entered as second class mail matter at the post office in West Palm Beach, in said Palm Beach County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she/he has neither paid nor promised any person, firm or corporation any discount rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper. Also published in Martin and St. Lucie Counties.



Sworn to and subscribed before 30th day of January, A.D. 2009



Personally known XX or Produced Identification _____

Type of Identification Produced _____

NOTARY PUBLIC-STATE OF FLORIDA



Karen M. McLinton

Commission #DD832672

Expires: NOV. 15, 2012

BONDED THRU ATLANTIC BONDING CO., INC.

STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the
foregoing is a true copy
of the record in my office.

THIS 10 DAY OF Feb, 20 09

SHARON R. BOCK
CLERK & COMPTROLLER

By _____

DEPUTY CLERK

NO. 3823398
NOTICE OF ADOPTION
RESOLUTION NO.
R2009-02
THE VILLAGE OF WELLINGTON VILLAGE COUNCIL PURSUANT TO THE AUTHORITY PROVIDED IN CHAPTER 54, CODE OF ORDINANCES KNOWN AS THE VILLAGE OF WELLINGTON RIGHT-OF-WAY ABANDONMENT ORDINANCE, DID HOLD A MEETING ON JANUARY 13, 2009, RESOLUTION NO. R2009-02 PERTAINING TO THE VACATING, ABANDON, DISCONTINUE AND CLOSE OF 5.18 ACRES OF A PORTION OF THE FUTURE LAKE WORTH ROAD EXTENSION RIGHT-OF-WAY FROM SOUTH ROAD WEST TO THE ACME IMPROVEMENT DISTRICT C-2 CANAL LOCATED 1.25 MILES WEST OF THE INTERSECTION OF LAKE WORTH ROAD AND SOUTH SHORE BOULEVARD LEGALLY DESCRIBED AS FOLLOWS: A PARCEL OF LAND LYING IN THE WEST ONE-HALF OF SECTION 20, TOWNSHIP 44 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 20, THENCE NORTH 00°50'05" EAST ALONG THE WEST LINE OF THE SOUTH ONE-HALF OF SAID SECTION 20, A DISTANCE OF 50.00 FEET TO AN INTERSECTION WITH THE NORTH RIGHT OF WAY LINE OF THE ACME IMPROVEMENT DISTRICT C-24 CANAL, AS RECORDED IN DEED BOOK 1118, PAGE 89, PALM BEACH PUBLIC RECORDS; THENCE SOUTH 89°28'02" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°50'05" EAST PARALLEL SAID WEST LINE OF SECTION 20, A DISTANCE OF 120.00 FEET TO A LINE 170.00 FEET NORTH OF AND PARALLEL WITH, AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SOUTH ONE-HALF OF SECTION 20; THENCE SOUTH 89°28'02" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 1843.30 FEET; THENCE NORTH 45°31'58" EAST, A DISTANCE OF 16.97 FEET TO AN INTERSECTION WITH A LINE 182.00 FEET NORTH OF AND PARALLEL WITH, AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SOUTH ONE-HALF OF SECTION 20; THENCE SOUTH 89°28'02" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 23.78 FEET; THENCE SOUTH 00°46'59" WEST, A DISTANCE OF 132.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID ACME IMPROVEMENT DISTRICT C-24 CANAL; THENCE NORTH 89°28'02" WEST, ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 1879.13 FEET TO THE POINT OF BEGINNING, CONTAINING 5.18 ACRES, MORE OR LESS, THE VACATION ABANDONMENT RESOLUTION NO. R2009-02 WAS DULY PASSED AND RECORDED IN THE MINUTES OF THE VILLAGE COUNCIL VILLAGE OF WELLINGTON DATED THIS 28TH DAY OF JANUARY 2009.
PUB: The Palm Beach Post
January 30, 2009

ACME Improvement District

Notice of Intent to Sell Surplus Property
To Far Niente Stables VI, LLC

ACME Improvement District Board has declared approximately 2.5 acres of land that was formally part of the Lake Worth Right-of-Way as surplus and is intending to transfer the land to the adjacent landowner Far Niente Stables VI, LLC as described in Resolution AC 2009-01

The sale will take place at 14000 Greenbriar Boulevard on or about 10:00 a.m. on March 2, 2009, subject to the terms of the sale being finally approved by the Board of Supervisors during the meeting of the Village Council of the Village of Wellington on February 24, 2009 at 7:00 p.m.

For copies of the Resolution please contact Awilda Rodriguez, Board Secretary at the Office of the Village Clerk located at 14000 Greenbriar Boulevard or by phone at (561) 791-4118.

Dated this 28th of January, 2009

Published: The Post
January 30, 2009
February 6, 2009
February 13, 2009

Awilda Rodriguez, Board Secretary

8. B

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: Approval of Addendum to the Agreement between the Village of Wellington, Professional Center at Wellington, LLC. and Rieker and Associates Inc. pertaining to the Installation of Required Paving and Drainage improvements for South Shore Boulevard from Greenview Shores to Pierson Road

ACTION REQUESTED: Discussion ☒ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒

FIRST READING ☐

SECOND READING ☐

REQUEST: Approve addendum to the contract for South Shore Phase I to allow the Village to make direct payments to contractors, H & J Construction, Inc.

EXPLANATION: The Village entered into a developer's agreement with Professional Center at Wellington LLC., the developers of the office complex located at South Shore Boulevard and Greenview Shores to reconstruct South Shore Boulevard from Pierson Road to Greenview Shores Boulevard. The agreement envisioned the Village reimbursing Professional Center for costs incurred at a rate of 93%.

The project is now completed and Professional Center has experienced some accounting conflicts with its lender concerning allocation of funds for their project which included roadway construction, land development and building costs. The difficulties in resolving the conflict with their lender has resulted in H & J Construction not getting paid timely for work they have completed.

Since the Village was to reimburse 93% of the costs, Professional Center has requested the Village amend the agreement to allow direct payment to H & J Construction. So, as to not cause H & J Construction any undue hardships, the Village staff concurs in making direct payments to H & J Construction. Professional Center has made their 7% payment To H & J Construction on all outstanding invoices.

H & J Construction is currently owed approximately \$650,000 plus \$200,000 in retainage. The Village is currently evaluating the invoices and will have a complete accounting for the Council to consider on or before the February 23rd agenda review meeting.

FISCAL IMPACT: N/A.

RECOMMENDATION: Recommend approval of contract addendum allowing for direct payment to H & J Construction.